

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NO. 17599 OF 2007
(O.A.NO.1879 of 2004)

C. Ramachandran

.. Petitioner

Vs.

1. The Inspector General of Police
Armed Police
Chennai - 600 010.

2. The Deputy Inspector
General of Police
Armed Police (M & W)
Trichy.

... Respondents

PRAYER: This Writ petition came to be numbered under Article 226 of the Constitution of India by way of transfer of O.A.No. 1879 of 2004 from the file of the Tamil Nadu Administrative Tribunal praying for issuance of a Writ of Mandamus, to direct the respondents herein to confer the promotion post of Sub Inspector of Police to the Petitioner on par with his junior with effect from 2001 with due regards to his seniority with all attendant and monetary benefits and pass further orders.

For Petitioner : Mr. R.S. Anand
M/s. Anand & Surya

For Respondents : Mr. K.V. Dhanapalan, AGP

ORDER

Mr. C. Ramachandran, seeking a direction to the respondents to confer the promotional post of Sub Inspector of Police to the petitioner on par with his junior with effect from 2001 with due seniority and all attendant and monetary benefits, had filed O.A. No.1879/2004 before learned Tamil Nadu Administrative Tribunal which got transferred to this Court as W.P. No. 17599 of 2007.

2. Learned counsel appearing for the petitioner submitted that the petition has been filed on the ground that the Director General of Police in his order Rc. No. AP.1(3)/ 284306/2002 dated 30.10.2003 modified the punishment of postponement of increment for one year without cumulative effect into one of black mark and the said black mark is not a punishment recognised under the Rule. As he was admittedly refused promotion in view of the punishment of postponement of increment for one year without cumulative effect, subsequent to modification of punishment, he should have been given promotion on par with his junior as though there was no punishment inflicted against him. Learned counsel appearing for the petitioner would further submit that after the petitioner joined the services as Grade II Police Constable, (TSP,Avadi), he got promotion as Havildhar in the year 1986. While he was working in the Vehicle Department as a Driver of a bus TTC 4618, unfortunately met with an accident and a criminal case was also registered in Chidambaram Police in Crime No.347/89 for offences under Sections 279 & 337 of IPC. Consequently, in MCOP No. 236/89 an award of Rs.23,000/- was also passed on 29.11.1995. In view of that, he was issued with a charge memo under rule 3(b) of CMT, by the Commandant, TSP IX Battalion in P.R. No. 104/98 for the loss caused to the Government because of his negligent driving. However, the Enquiry Officer held the charges as not proved but the disciplinary authority issued a dissenting minute and awarded the punishment of postponement of increment for one year without cumulative effect on 27.04.1989.

3. Aggrieved by the same, the petitioner filed an appeal before the Deputy Inspector General of Police, Armed Police, Trichy, the second respondent herein. Unsuccessfully after the rejection of his appeal, the petitioner filed a review application before the Inspector General of Police, Armed Police, the first respondent herein. Although the same was also rejected, the petitioner filed a mercy petition before the Director General of Police on 16.12.2002. Considering the representation of the petitioner, the first respondent Director General of Police modified the punishment of postponement of increment for one year without cumulative effect into a Black Mark by his order dated 30.10.2003. In the meanwhile from the date of issuance of the charge memo under Section 3(b) on 12.04.1999, the petitioner was denied promotion. Moreover, when he suffered the punishment of postponement of increment for one year without cumulative effect on 27.04.1999 till the said punishment was modified into one of Black Mark on 30.10.2003 for about 4 years, citing the currency of punishment, his name was not considered for promotion. However, the rule does not contemplate that Black Mark is a punishment and hence the petitioner should be given promotion as though he has not suffered any punishment, on par with his juniors, he pleaded.

4. Opposing the above prayer, learned Additional Government Pleader appearing for the respondents urged this Court to dismiss the writ petition on two grounds. Admittedly in the present case, the petitioner suffered departmental proceedings as he was issued with a charge memo under Section 3(b), which ended in awarding the punishment of postponement of increment for one year without cumulative effect by order dated 27.04.1999 by the Commandant, TSP IX Battalion in P.R. No. 104/98. The petitioner filed an appeal unsuccessfully before the second respondent who has rejected the same on 19.08.1999. Subsequently, he filed a review petition before the Inspector General of Police, Trichy, the first respondent herein on 19.10.1999 but the same was also rejected. However, when he moved a mercy petition, the Director General of Police modified the said punishment into one of Black Mark, which has to be equated as 'Censure'. Therefore, the respondents have rightly denied the benefit of promotion by closing the promotional avenues. Therefore, nothing is wrong in equating the punishment of Black Mark as 'Censure'. Secondly, it was stated that the petitioner was also given promotion to the post of Sub Inspector of Police on 23.04.2004 and after 10 years, he was promoted as Inspector of Police namely, on 03.04.2014 and on reaching the age of superannuation has retired from service. Therefore, when the petitioner was given two promotions on two phases, namely, Sub Inspector of Police and Inspector of Police and as he is no more in service, no further direction is required to be given.

5. But this Court hardly finds any justification. The reason is, admittedly, the petitioner was able to prove before the Enquiry Officer that the charges levelled against him in the charge memo issued under Section 3(b) in P.R. No. 104/98 that the loss caused to the Government is not maintainable. Therefore, the enquiry officer found him not guilty. But the Commandant, TSP IX Battalion deviated from the findings and imposed the punishment of postponement of increment for one year without cumulative effect on 27.04.1999. As against that, the petitioner filed an appeal before the second respondent on 05.06.1999. However, the same was rejected by order dated 19.08.1999. Therefore, the petitioner filed a review application before the Inspector General of Police, the first respondent. He also rejected the same by order dated 11.02.2000. Aggrieved by the same, the petitioner moved a mercy petition on 16.12.2002. Accepting the mercy petition, the Director General of Police, in his order Rc. No. AP.1 (3)/ 284306/2002 dated 30.10.2003 modified the punishment of postponement of increment for one year without cumulative effect into one of Black Mark. But the Rule does not say that the Black Mark is a punishment. Therefore, the contention made by learned Additional Government Pleader appearing for the respondents that the Black Mark is also a punishment as it has to be treated equal to Censure cannot be accepted.

6. Therefore this Court is left with no other option except to allow the writ petition. While the Director General of Police has modified the punishment of postponement of increment for one year without cumulative effect into one of Black Mark, which is not even a punishment under the Rules, it has to be necessarily presumed that the petitioner has not suffered any punishment. Therefore the petitioner is entitled to be considered for promotion from the year 2001. Since the counter affidavit filed by the respondents also shows that the name of the petitioner has been included but he has not been given promotion because of the punishment given in view of the 3(b) charges, hence, it is needless to mention that the petitioner has to be given promotion with effect from 2001, on par with his junior.

7. Accordingly, the writ petition is allowed. The respondent department shall consider and pay all the consequential monetary benefits as eligible. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

avr

To

1. The Inspector General of Police
Armed Police
Chennai - 600 010.

2. The Deputy Inspector
General of Police
Armed Police (M & W)
Trichy.

+1 cc to M/S.Anand & Suryas Advocate sr.9935

W.P.NO. 17599 OF 2007
(O.A.NO.1879 of 2004)

aa27/04/2015