

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition No.10340 of 2016
and W.M.P.No.9143 of 2016

State of Tamil Nadu rep. by its
Principal Secretary to Government,
Home (Pol.IA) Department,
Fort St. George, Chennai - 600 009.

..... Petitioner

- Vs -

1. R.Tamil Chandran
2. The Union of India
rep. by The Secretary,
Ministry of Home Affairs,
Grih Mantralaya, North Block,
New Delhi.
3. The Secretary,
Union Public Service Commission,
New Delhi.
4. The Director General of Police,
Tamil Nadu, Kamarajar Salai,
Mylapore, Chennai - 600 004.
5. The Registrar,
Central Administrative Tribunal,
Madras Bench.

..... Respondents

PETITION under Article 226 of The Constitution of India
praying for the issuance of Writ of Certiorari to call for the
records of the Tribunal, the fifth respondent herein pertaining
to the impugned order, dated 02.07.2014 made in O.A.No.514 of
2011 and quash the same.

For Petitioner : Mr.P.Karthikeyan, G.A.

O R D E R

(Order of the Court was made by S.VAIDYANATHAN, J.)

Challenging the order passed by the Central Administrative Tribunal dated 02.07.2014 in O.A.No.514 of 2011 directing the respondent therein to expunge the remarks recorded in the confidential report of the first respondent, the State of Tamil Nadu has filed the present Writ Petition.

2. The brief facts of the case are as follows:

The first respondent was directly recruited and appointed as DSP through TNPSC by the Government of Tamil Nadu during 1989. Thereafter, he was promoted and posted in various posts. In the meantime, while the first respondent was working as DSP Rasipuram, the fourth respondent herein has communicated the first respondent through memo dated 03.05.2000 the adverse entries for the period from 24.05.1995 to 31.3.1996. The adverse entries read "satisfactory with shortcomings" and he needs to improve himself. For the subsequent years, entries were made as 'Good' 'Very Good' 'Outstanding'. As against the said adverse entries, the first respondent herein preferred an appeal before the fourth respondent, which was rejected on 09.10.2000 and the review filed before the petitioner herein was also rejected on 23.11.2000. In view of the said adverse remarks, the name of the first respondent herein was not included in the select list of IPS for the year 2001 and 2002. However, on 29.12.2003, he was appointed as IPS by the second respondent herein and was allotted to Government of Tamil Nadu.

3. Challenging the said adverse entries and to set aside the notification of select list for the year 2001 and 2002, the first respondent herein has filed O.A.Nos.514 and 515 of 2011 along with Miscellaneous Applications in M.A.Nos.61 and 62 of 2011 before the Central Administrative Tribunal.

4. The Tribunal, after hearing both sides and following the decision of the Apex Court in the case of Dev Dutt V. Union of India and others - Civil Appeal No.7631/2002 reported in (2008) 8 SCC 725 and Abhijit Ghosh Dastidar v. Union of India & Others in Civil Appeal No.6227 of 2008 - 2009 (16) SCC 146 and the order of the Division Bench of this Court in W.P.Nos.27045 and 27055 of 2008, allowed the application filed to expunge the adverse remarks holding as follows:

"12. Even the State Government in G.O.Ms.No.2787 Public Dept. dt. 12.11.1969 ordered that the adverse remarks less than three years old need not be communicated if the subsequent officer considers that the defects no longer exist. Admittedly, as far as the applicant is concerned, for the subsequent periods, he was rated as 'Very Good', 'Outstanding', etc. Hence, in our opinion the adverse remarks communicated nearly after a period of five years to the applicant is non-est in law and as such, the applicant is to succeed in his challenge made to the adverse entries in OA 514/2011.

13....

14. For the reasons stated above, OA 514/2011 is allowed and the impugned order in GO (D) 666 Home Dept dt.26.07.2001 of the third respondents is set aside and consequently there will be a direction to the respondent to expunge the adverse remarks recorded in the confidential report of the applicant"

5. However, insofar as the plea of the first respondent to include his name in the notification of select list for the year 2001, the Tribunal rejected the said application on the ground of delay and laches holding as follows:

"13. As regards the OA 515/2011 is concerned, the application is liable to be dismissed on the ground of delay and laches. The applicant is challenging the non-inclusion of his name in the 2001 select list nearly after 10 years. If the applicant's contention is accepted, it will disturb the entire administrative hierarchy and the seniority position of several officers which has become final long back. We do not see any reason to grant relief to the applicant in the above application. Accordingly the OA 515/2011 is dismissed."

6. Aggrieved by the direction given by the Tribunal to expunge the adverse remarks, the present Writ Petition has been filed.

7. Heard the learned Government Advocate appearing for the petitioner and perused the materials placed before this Court.

8. We find that the issue with regard to the delay in communicating the adverse remarks stands covered by the decision of the Supreme Court in the case of Dev Dutt V. Union of India and others - Civil Appeal No.7631/2002 reported in (2008) 8 SCC

725 (supra), wherein, the Supreme Court, while dealing with the communication of adverse entries to the person concerned, held that all entries (whether poor, fair, average, good or very good) in the annual confidential report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to the employee within a reasonable period, so that the employee can make a representation for its upgradation. The Supreme Court further held that the State must be a model employer and must act fairly towards its employees. Only then would good governance be possible.

9. Admittedly, in the present case, the adverse entries made for the period between 24.5.1995 and 31.3.1996 were communicated to the first respondent on 03.05.2000. As observed by the Tribunal, if the said adverse entries were communicated to the first respondent, he would have challenged the same immediately.

10. As there were lapses on the part of the petitioner herein to communicate the adverse entries to the first respondent immediately, the decision of the Supreme Court referred supra squarely applies to the case of the first respondent. Therefore, we find no reason to entertain this Writ Petition. Further, as the main relief sought for by the first respondent before the Tribunal to set aside the Notification of select list 2001, thereby to refix his seniority was rejected on the ground of laches, we do not find that expunging the adverse remarks will affect the administration. It is to be noted that the petitioner has not challenged that portion of the order made in O.A.No.515 of 2011.

11. In the result, we do not find any reason to interfere with the order passed by the Tribunal and accordingly, the Writ Petition stands dismissed. No costs. Consequently, W.M.P.No.9143 of 2016 is also dismissed.

सत्यमेव जयते

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Secretary,
Union of India
Ministry of Home Affairs,
Grih Mantralaya, North Block,
New Delhi.
2. The Secretary,
Union Public Service Commission,
New Delhi.
3. The Director General of Police,
Tamil Nadu, Kamarajar Salai,
Mylapore, Chennai - 600 004.
4. The Registrar,
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+1 cc to the Government Pleader sr.18100

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