

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Orders reserved on 26.10.2016)

DATED :02.12.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.11511 of 2016

V.R.Muthuveerappan

...Petitioner

Vs.

1. The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai-4.

2. The Commissioner of Police,
Greater Chennai Police,
Vepery,
Chennai-7.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to give effect to the order of Promotion as Inspector of Police issued to the petitioner, vide Proceedings of the 1st respondent in Rc.No.102393/NGB.I (2)/2014, dated 12.06.2015, as he was included in the Panel of the year 2010 and promoted with effect from the year 2011, based on the orders of this Court made in W.P.No.15549/2010 dated 20.07.2010, without reference to the subsequent charge memo dated 11.06.2015.

For Petitioner : Mr.V.Ravikumar

For respondents : Mr.K.Dhananjayan, Spl. GP.

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Mandamus, directing the respondents to give effect to the order of Promotion as Inspector of Police issued to the petitioner, vide Proceedings of the 1st respondent in Rc.No.102393/NGB.I(2)/2014, dated 12.06.2015, as he was included in the Panel of the year 2010

and promoted with effect from the year 2011, based on the orders of this Court made in W.P.No.15549/2010 dated 20.07.2010, without reference to the subsequent charge memo dated 11.06.2015.

2. In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows—

2-1. The petitioner was enlisted as Grade II Police Constable and after training, he was posted to the Greater Chennai Police on 30.04.1988. Thereafter, he was promoted as Head Constable on 23.01.1998 and then, promoted as Sub-Inspector of Police on regular basis from 15.03.2005. His entire service was rendered only in Motor Transport Wing.

2-2. It is further stated by the petitioner that one N.K.Kaladharan and C.Ragupathy of Armed Reserve, Motor Transport, Greater Chennai Police have filed a writ petition in W.P.No.25043/2002 before this Court, stating that more promotional avenues were available for the police personnel working in the Armed Reserve; whereas the police personnel working in the Motor Transport wing are deprived of their chance for promotion for want of sufficient number of promotional posts within Motor Transport Wing. In the said writ petition, this Court by order dated 18.09.2007 has directed the respondents to consider the date of recruitment as the basis for fixing seniority and effect promotion and include the names of the petitioners therein in the 'C' list and give promotion to them. Pursuant to the said order of this Court, many Police Personnel who were similarly placed persons have filed various writ petitions before this Court and in all such writ petitions, the same relief was granted. The petitioner herein is also one of the similarly placed persons and he requested the respondents for the revision of his seniority and to give consequential benefits to him. Since the petitioner's request was not considered, the petitioner had earlier filed a writ petition in W.P.No.15549 of 2010 seeking similar relief and this Court directed the respondents to consider the case of the petitioner on par with the others to whom benefits have been extended and to pass orders within a period of twelve weeks.

2-2. Thereafter, the 1st respondent passed an order in G.O.(Ms).No.97, Home (Pol.V) Department, dated 10.02.2011, for the revision of the petitioner's seniority as per the Court's order by relaxing the Rule 3(a)(1) and Annexure-1 of the Special Rules of Tamil Nadu Police Subordinate Service Rules. The 2nd respondent herein revised the petitioner's seniority in the rank of Head Constable as 27.06.1992 vide Proceedings in Rc.No.178034/NGB.V(2)/2012, dated 22.05.2013. Consequent to the inclusion of his name in the 'C' list of Head Constables (AR) fit for promotion as Sub-Inspector of Police (AR) drawn for the year 1999-2000, the

petitioner's 'B' list in the rank of Sub-Inspector of Police was declared by the 2nd respondent vide his proceedings in Rc.No.Estt.2(3)/170/53863/2014 in CPO.No.2179/2014, dated 19.08.2014 and in Rc.No.Estt.I/Tr.383/14548/2014 in TZO No.671/2014 dated 10.09.2014. Due to the same, the petitioner was eligible for inclusion in the 'C' list of Sub-Inspectors of Police (AR) fit for promotion as Inspectors of Police (Armed Reserve) drawn for the year 2010. Accordingly, the Commissioner of Police, Chennai, vide his letters Estt.2(3)/170/53863/2014, dated 19.08.2014, 16.09.2014 and 15.10.2014 has sent proposals to the Director General of Police, Chennai, recommending the petitioner's name and four other Sub-Inspectors of Police, for inclusion in the 'C' list of Sub-Inspectors of Police (Armed Reserve) fit for promotion as Inspectors of Police (Armed Reserve) drawn for the year 2004 and 2010. The petitioner's name was included in the 'C' list of Sub-Inspectors of Police (Armed Reserve) fit for promotion as Inspectors of Police (Armed Reserve) drawn for the year 2010 and assigned seniority in the said list as 49(C) vide proceedings of the Director General of Police, Chennai issued in Rc.No.102393/NGB.I(2)/2014, dated 12.06.2015. Consequent to the inclusion of his name in the said 'C' list, the Director General of Police, Chennai promoted the petitioner to the rank of Inspector of Police (Armed Reserve) and posted him to the South Zone in the existing vacancy in Memo Rc.No.109243/NGB.V(2)/P.04/'C' list/2015, dated 16.07.2015. In para 3 of the said Memo, some instructions with regard to the pending disciplinary proceedings have been mentioned which is reproduced below

"3) Before relieving the above Sub-Inspector of Police (AR) on his promotion, the Commissioner of Police, Greater Chennai Police, Chennai will please ensure that no specific charges under Rule 3(b) of TNPSS (D&A) Rules 1955 are framed, served and pending disposal (or) charge sheet in a criminal case is filed against him. The promotion in such case should be deferred till the disposal of disciplinary proceedings/Criminal case/completion of current punishment. The same procedure should be adopted in cases where such formulated charges are stayed in Tribunal/Court in all such cases where promotion is deferred for the above said reason, necessary report should be sent to Chief Office immediately."

2-3.It is further stated by the petitioner that during June, 2015, a charge-memo under Rule 3(b) of TNPSS (D&A) Rules, 1955 in P.R.No.52/Traffic/2015 has been issued to the petitioner, alleging that during the Promotion Board meeting conducted for the drawl of 'C' list of Head Constables (Armed Reserve) fit for promotion as Sub-Inspectors of Police (Armed Reserve) drawn for the year 2004, the petitioner has tampered the grading ie., from lower grading to "Outstanding" against the column 'Overall Performance' in his five years Annual Confidential Reports, which were taken up for consideration by the Board for getting more marks to qualify in the promotion board.

2-4.Due to the pendency of the said charge-memo, the promotion ordered for the petitioner to the post of Inspector of Police has not been given effect. Hence, the petitioner had filed a writ petition in W.P.No.33638/2015 before this court seeking to quash the said charge-memo. This Court by order dated 16.10.2015 has stayed the operation of the disciplinary proceedings. Now, according to the petitioner, he is entitled to get promotion as Inspector of Police from the date of promotion of his junior and not effecting the promotion by citing the charges framed after a lapse of 11 years is illegal. Hence, the petitioner has come forward with the present writ petition for the relief as stated supra.

3.When the matter was taken up for consideration, the learned counsel for the petitioner submitted that pursuant to the direction given by this Court in W.P.No.15549/2010, vide order dated 20.07.2010, the petitioner's name was included in the 'C' list of Sub-Inspectors of Police (Armed Reserve) fit for promotion as Inspectors of Police (Armed Reserve) for the year 2010 at Serial No.49(C)/2010 vide proceedings of the Director General of Police, Chennai issued in Rc.No.102393/NGB.I(2)/2014, dated 12.06.2015. The crucial date for preparing the panel of the year 2010 is 01.06.2010. The juniors to the petitioners were promoted as Inspectors of Police with effect from 18.10.2010. Though the order was passed by this Court in W.P.No.15549/2010 as early as on 20.07.2010, the order was implemented belatedly after a lapse of 5 years. The charge-memo was issued vide proceedings of the 2nd respondent dated 11.06.2015, in respect of the alleged incident said to have taken place during the year 2004. The learned counsel for the petitioner would further submit that neither on the crucial date of preparing panel ie., 01.06.2010 for the year 2010, nor at the time of promotion ordered to the petitioner's juniors ie., 29.10.2010, no charge memo was pending against the petitioner. Thus, the learned counsel for the petitioner sought for a direction to the respondents to give effect to the order of Promotion as Inspector of police issued to the petitioner, dated

12.06.2015, as he was included in the Panel of the year 2010 and to promote him with effect from the year 2011.

4. Per contra, the learned Special Government Pleader, by filing a detailed counter, would contend that no doubt, pursuant to the direction given by this Court in W.P.No.15549 of 2010, dated 20.07.2010, the Government by order vide G.O.Ms.No.97, Home (Pol.V) Dept dated 10.02.2011 has issued orders for the revision of seniority of the petitioner herein, by relaxing the Rule 3(a)(1) and Annexure of the Special rules. Accordingly, the seniority of the petitioner in the rank of Head Constable was revised as 27.06.1992 from 23.01.1998 by proceedings in Rc.No.178034/NGB.V(2)/2012, dated 22.05.2013. The petitioner's name was included in the 'C' list of Head Constables (AR) fit for promotion as Sub-Inspectors of Police (AR) for the year 1999-2000. Consequent to the above revision of seniority, the petitioner was eligible for inclusion in the 'C' list of Sub-Inspectors of Police (AR) fit for promotion as Inspectors of Police (AR) drawn for the year 2010. Based on the proposal sent by the Commissioner of Police, Chennai City, the name of the petitioner and four others were included in the 'C' list of Sub-Inspectors of Police (AR) fit for promotion to the post of Inspectors of Police, for the years 2004 and 2010 in Proceedings Rc.No.109243/NGB.V(2)/2014, dated 12.06.2015 and Promotion orders as Inspectors of Police (AR) were issued in Memo Rc.No.109243/NGB.(2)/C.List/2015, dated 16.07.2015 of the DGP, Tamil Nadu, Chennai. However, based on an enquiry report dated 05.10.2012 of the Assistant Commissioner of Police, Central Crime Branch, (Forgery Cases Wing), Greater Chennai Police, 12 police officers of Armed Reserve and Traffic were dealt with on a charge under Rule 3(b) of TNPSS (D&A) Rules, 1955 for having tampered with their Annual Confidential Reports for inclusion of their names in the 'C' list of Sub-Inspectors of Police (AR) for the year 2004. On further enquiry report dated 25.04.2013 submitted by the Assistant Commissioner of Police, CCB (Forgery Case Wing), it came to light that 30 more Police Officers including the petitioner herein were involved in the same delinquency and hence, the petitioner along with others have been dealt with on a charge under Rule 3(b) of TNPSS (D&A) Rules, 1955. However, the petitioner by filing writ petition in W.P.No.33638 of 2015 has obtained interim stay of the said proceedings. Since the petitioner has been dealt with the charge under Rule 3(b) of TNPSS (D&A) Rules, the petitioner's promotion to the rank of Inspector of Police (AR) has not been given effect to. Thus, the learned Special Government Pleader sought for dismissal of the writ petition.

5. I have carefully heard the submissions made on either side and perused the materials available on record.

6. It is seen that pursuant to the direction given by this Court in W.P.No.15549 of 2010, dated 20.07.2010, the Government by order in G.O.Ms.No.97, Home (Pol.V) Dept dated 10.02.2011 has issued orders for the revision of seniority of the petitioner herein, by relaxing the Rule 3(a)(1) and Annexure of the Special rules. Accordingly, the seniority of the petitioner in the rank of Head Constable was revised as 27.06.1992 from 23.01.1998 by proceedings in Rc.No.178034/NGB.V(2)/2012, dated 22.05.2013. The petitioner's name was included in the 'C' list of Head Constables (AR) fit for promotion as Sub-Inspectors of Police (AR) for the year 1999-2000. Thereafter, based on the proposal sent by the Commissioner of Police, Chennai City, the name of the petitioner and four others were in the 'C' list of Inspectors of Police (AR) for the years 2004 and 2010 in Proceedings Rc.No.109243/NGB.V(2)/2014, dated 12.06.2015 and promotion orders as Inspectors of Police (AR) were issued in Memo Rc.No.109243/NGB.(2)/C.List/2015, dated 16.07.2015 of the DGP, Tamil Nadu, Chennai. However, the said promotion was not given effect to in respect of the petitioner on the ground that the petitioner was dealt with a charge under Rule 3(b) of TNPSS (D&A) Rules.

7. It is admitted by the learned Special Government Pleader that on the crucial date ie., on 01.06.2010, for preparing the list for promotion, there is no charge-memo pending against the petitioner. It is well settled legal principal that an employee can only be deprived the right to be considered for promotion during pendency of department proceedings, if the same is pending on the crucial date or even before the order of promotional is passed. In the instant case, admittedly, on the crucial date for preparing the list for promotion, ie., 01.06.2010, no charge-memo was pending against the petitioner.

8. In this regard, it would be appropriate to place a reference in the decision reported in (2013) 5 MLJ 59 [G.Venkatachalam Vs. Spl.Commr & Commr. Of Revenue Admin], wherein it has been held as follows:-

"14. On consideration, this Court finds, that the defence of the respondents cannot be accepted. It is well settled law, that an employee can only be deprived the right to be considered for promotion during pendency of departmental proceedings, if pending on the crucial date or even before the order of promotion is passed. The

competent authority has no right to deny the right of promotion, merely on the basis of the contemplated enquiry, when no charge sheet is issued to the employee till the order of promotion is passed.

15. The petitioner in this case has been denied the right of promotion without any basis whatsoever, as admittedly there was no charge sheet pending against him either on the crucial date of preparation of panel or on the date of promotion of persons junior to the petitioner.

16. Consequently, this writ petition is allowed. The impugned orders are quashed, and the writ in the nature of mandamus is issued, directing the respondents to promote the petitioner as Deputy Tahsildar from the date of his immediate junior was so promoted with all consequential benefits."

Similarly, in the case in P.M.Palanisamy Vs. The Special Commissioner and the Transport Commissioner, Chepauk, Chennai, in W.P.No.30381 of 2007, by order dated 09.04.2009, the learned Single Judge of this Court, by following the decision of the Division Bench in W.A.No.115 of 2008, dated 10.04.2018, has allowed the writ petition and given a direction to the respondents therein to give promotion to the petitioner therein. The relevant portion in the order dated 09.04.2009, passed by the learned Single Judge, is extracted hereunder_

"9. The crucial question that arises for consideration is whether the denial of promotion is justifiable even though at the time of drawal of the seniority list, the petitioner was not served with a charge memo. Admittedly, no charge memo was pending on the date of drawal of the panel fit for promotion to the post of Personal Assistant to Regional Transport Officer. By G.O.(D) No.601, Home Department dated 23.05.2007, the Government has decided to frame charges against the petitioner under Rule 17(b) of the said Rules in exercise of the powers conferred under Rule 9 of the said Rules. The charges, in fact, had been framed against the petitioner only on 09.10.2007. Thus, as stated already, on the date of drawal of the seniority list, the petitioner was not facing any charges and that no charge memo has been issued to him. In fact, after filing of the present writ petition, charges have been framed against the

petitioner. In view of the above stated position, the denial of promotion is not justifiable.

10. A Division Bench of this Court in Writ Appeal No.115 of 2008 dated 10.04.2008 had taken the similar stand. It would be useful to extract herein paragraphs 3, 4, 5, 7 and 8 of the said order:-

" 3. The stand of the Department in the writ petition was to the effect that on the crucial date for consideration i.e, on 15.3.2007, a charge memo under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules was pending. So far as the above aspect is concerned, we have gone through the materials on record and also the file, which was produced by the Special Government Pleader. It appears that eventhough a signed document is available in the file, which was apparently signed on 17.9.2006 by the previous Transport Commissioner, the fact remains that the charge memo was issued under the signature of the subsequent Transport Commissioner, with the date 10.7.2007 and it was actually served on 28.7.2007 on the petitioner.

4. In AIR 2007 SC Pg. 1706 (Coal India Limited & Ors. V. Saroj Kumar Mishra), the Supreme Court, after referring to several decisions, has observed as hereunder:

"A departmental proceeding is ordinarily said to be initiated only when a charge-sheet is issued."

5. In the present case, the earlier charge memo, which had been signed had not been issued and similarly, the present charge memo, eventhough signed on 10.7.2007, was actually issued, so far as the appellant is concerned, only on 28.7.2007. Therefore, it cannot be said that on the date when the panel was prepared ie, on 15.3.2007,

any charge memo was pending.

7.The other contention of the learned counsel for the respondent is to the effect that even assuming that no charge memo was pending when the appellant was promoted and when the juniors to the appellant were promoted, as of today, a charge memo is pending and therefore, the appellant should not be given the benefit of promotion.

8.The learned counsel for the appellant has rightly contended that eventhough mere inclusion of name in the panel for promotion would not confer any right to be promoted on a particular date, atleast, on the date on which the juniors were promoted, ie. on 28.6.2007, a right accrued to the appellant to be promoted. On the said date, atleast, it cannot be said that any charge memo was pending. Therefore, the appellant should have been promoted with effect from that date. As observed by the Supreme Court in AIR 2007 SC 1706 (cited supra) , merely because a person is promoted, the employer is not in a helpless situation. Therefore, it will be always open to the concerned employer to continue with the disciplinary proceedings and pass orders in accordance with law and obviously, the promotion by virtue of the order of the Court will not stand in the way. "

11.Considering the above facts and circumstances, I am inclined to set aside the impugned proceedings of the respondent dated 06.08.2007 and the writ petition stands allowed. The respondent is directed to promote the petitioner as Personal Assistant to Regional Transport Officer on par with his juniors with effect from the date of promotion given to his juniors with all attendant and monetary benefits. The respondent is also directed to do so within a period of four weeks

from the date of receipt of a copy of this order. It is needless to say that the departmental proceedings initiated against the petitioner can be proceeded with. No order as to costs. Consequently, connected miscellaneous petitions are closed."

The dictum laid down in the above said decisions is squarely applicable to the present facts of the case. Even in the case on hand also, admittedly there was no disciplinary proceedings pending either on the crucial date of preparation of panel or on the date of promotion of persons junior to the petitioner. Hence, on the mere contemplation/initiation of departmental proceedings against the petitioner, the petitioner's promotion cannot be deferred. Hence, this Court is of the opinion that the petitioner is entitled for the relief sought for in this writ petition.

9. In the result, the writ petition is allowed and the respondents are directed to give effect to the order of promotion, dated 12.06.2015, as Inspector of Police to the petitioner. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai-4.

2. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai-7.

+1cc to Mr.V.Ravikumar, Advocate, S.R.No. 71329

+1cc to the Government Pleader, S.R.No. 71694

W.P.No.11511 of 2016

GJ II(CO)
PSI (29/12/2016)