

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserve Date : 26-11-2015

Date of Decision : 25- 01-2016

CORAM :

THE HON'BLE DR.JUSTICE S.TAMILVANAN
AND
THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

W.P.No.29382 of 2015

G.Ramesh

..... Petitioner

vs

1. Union of India represented by
The General Manager,
Heavy Alloy Penetrator Project,
Trichy - 25.
2. The Ordnance Factory Board, Rep by its
Director General, Ayudh Bhavan,
10-A, S.K.Bose Road,
Calcutta - 700 001.
3. The Deputy General Manager (Administration)
Heavy Alloy Penetrator Project,
Trichy - 25.
4. The Registrar
Central Administrative Tribunal
Madras Bench - 104. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records and quash the orders passed by the fourth respondent in O.A.No.1542 of 2012, dated 10.09.2014 and in R.A.No.64 of 2014, dated 02.01.2015 and consequently to direct the first respondent to elevate the petitioner to the post of Highly Skilled Grade I in PB-1 (5200-20200) + GP 2800 w.e.f. 01.01.2006 with all consequential benefits including monetary benefits.

For petitioner : Mr.R.Pandian

For Respondents : Mr.S.Namo Narayanan, CGSPC
for R1 to R3
R4 - Tribunal

ORDER

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

This Writ Petition has been filed by the petitioner, invoking Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records and quash the orders passed by the fourth respondent in O.A.No.1542 of 2012, dated 10.09.2014 and also in R.A.No.64 of 2014, dated 02.01.2015 and consequently to direct the first respondent to elevate the petitioner to the post of Highly Skilled Grade I in PB-1 (5200-20200) + GP 2800 w.e.f. 01.01.2006 with all consequential benefits including monetary benefits.

2. The petitioner was initially appointed as Semi Skilled Worker in the Heavy Alloy Penetrator Project, Trichy and later promoted as skilled worker and further promoted to the post of Highly Skilled Fitter on 30.11.1999 by a duly constituted selection committee (DPC). The petitioner has been a trade union activist / leader / office bearer of HAPFE Union, which is a registered Trade Union, as per Trade Unions Act, 1926 and also recognised by the Management. The petitioner along with other members of the said Trade Union was conducting a legitimate peaceful trade union activities on 20.05.2005. However, for the said Trade union activities, members of the said Trade Union were issued with charge memorandums. Accordingly, charge memorandum No.155/GR/16/91/DIG/HAPP/2005, dated 04.06.2005 were issued on the petitioner for imposing minor penalty under Rule 16 of the CCS (CCA) Rules, 1965 for the alleged misconduct arising out of the lawful trade union action undertaken by him as an office bearer of registered / recognised trade union, to redress the grievances of the members of the Trade Union. Though the proceeding initiated against the petitioner was for a minor penalty, the petitioner sought for conducting an inquiry as provided under CCS (CCA) Rules and accordingly, a full-fledged inquiry was conducted and at the end, the Inquiry Officer concluded that the charges against the petitioner was not proved, vide its communication, dated 05.12.2006. However, instead of acting on the report of the inquiry officer, which is the result of an elaborate inquiry, the Disciplinary Authority, having disagreed with the findings arrived at by the Inquiry Officer, issued a notice to the petitioner, for which the petitioner submitted his detailed reply, whereby denied the allegations raised against him. Thereafter, the Disciplinary Authority, imposed a penalty of "Censure", vide its Penalty Advice, dated 01.06.2007.

3. The petitioner further submits that in the meanwhile the third respondent, vide its order No.12039/LB/HAPP/2006/Labour Bureau, dated 24.03.2006, released a Seniority List of Industrial Employees of the Organisation, wherein the petitioner stood at No.14 out of 39 borne in the seniority list pertaining

to Highly Skilled Fitter Trade. Consequent to the implementation of the recommendations of the VI CPC and the notification of civilians in Defence Services (Revised Pay) Rules, 2008 and the amendment issued thereto, the Highly Skilled Grade has been bifurcated equally (50% + 50%) into two distinct grades, namely Highly Skilled Gr.I and Highly Skilled Gr.II, where the petitioner ought to have been in the list of Highly Skilled Grade I in the fitter trade, instead his name was placed in Sl.No.1 in the order pertaining to Highly Skilled Grade II (i.e., in the lower grade) despite his name finding higher in the seniority list published earlier on 24.03.2006 in total disregard of all the rules and regulations framed by the respondents themselves.

4. The petitioner had submitted a representation, dated 28.04.2011 explaining the wrong committed by respondents in not placing the petitioner in Highly Skilled Gr.I, while implementing the cadre restructuring and received a letter No.12002/HAPP/LB/2001, dated 04.08.2011 from the third respondent rejecting the claim of the petitioner for placing in the higher grade stating that the petitioner was under cloud from 04.06.2005 till 02.06.2007 as the disciplinary proceeding ended in imposing minor penalty of "Censure". This was done by the respondents without appreciating the fact that only a minor penalty proceeding was initiated and it culminated in awarding only "Censure", which does not place any embargo on effecting promotion as no penalty of withholding of promotion was imposed on the petitioner. As the representation submitted by the petitioner on 28.04.2011 was rejected by the third respondent, vide his No.12002/HAPP / LB/2011, dated 04.08.2011, he approached the Central Administrative Tribunal, Madras Bench in O.A.No.1542 of 2012. The Central Administrative Tribunal, by order, dated 10.09.2014 dismissed the Original Application. Then the petitioner filed a Review Petition No.64 of 2014 in O.A.No.1542 of 2012 before the said Tribunal and the same was also dismissed, by order, dated 02.01.2015. Hence, the petitioner has come forward before this Court with the present writ petition, seeking for the relief as stated supra.

5. Mr.R.Pandian, learned counsel appearing for the petitioner submitted that the failure to elevate the petitioner to the post of Highly Skilled Grade I, consequent to restructuring and ignoring placing of senior to the extent of 50% of the cadre strength, in spite of the fact that the petitioner ranks senior, as per the seniority list issued by the first respondent is arbitrary, irrational and violative of Articles 14 and 16 of the Constitution of India. Learned counsel for the petitioner further submits that it is a settled proposition of law that censure is only a minor penalty and therefore, even during the currency of censure imposed on 01.06.2007, case of the petitioner ought to have been considered for upgradation / promotion as Highly Skilled Grade-I, however, that was not legally considered by the respondents, even after the currency period.

6. Mr.S.Namo Narayanan, learned Central Government Senior Panel Counsel appearing for the respondents 1 to 3 submitted that the OFB communication, dated 13.12.2010 containing the instructions on the subject of restructuring the cadre of Artisan Staff in Defence Establishments provided for splitting of the HSG into HSG-I and HSG-II. Further, it is instructed that the senior most highly skilled employees shall be placed in the HSG-I as per the revised ratio calculated on the sanctioned authorized strength. In the same communication, it is also stated that placement of 50% of the existing Highly Skilled Workers as HSG-I, w.e.f 1.1.2006 will be treated as promotion for the purpose of ACP. As per clarifications issued by the OFB on the subject in the communication dated 25.01.2011, it has been clarified that the movement of HSG-I to Master Craftman, HSG-II to HSG-I and Skilled Grade II to HSG-II are to be treated as promotion w.e.f 1.1.2006. Even in the orders of the Tribunal in O.A.No.734 of 2013, dated 08.01.2014, the aspect was taken note of. According to the Standing counsel, the relief sought for was not mere placements as claimed by the petitioner, instead the same was treated as promotion, hence, the petitioner could not be considered for promotion to HSG-I, w.e.f 1.1.2006, in the light of the disciplinary proceeding initiated against him. It is further argued by the learned counsel for the respondents 1 to 3 that the petitioner had been charge sheeted and on found guilty was imposed with the penalty of "Censure", vide order, dated 01.06.2007. Therefore, the petitioner was considered for promotion to HSG-I for the immediate next vacancy arose after the imposition of the penalty in the Trade / Grade of Fitter / Highly Skilled Grade I and was promoted w.e.f 24.01.2014.

7. As contended by the learned counsel appearing for the petitioner, it has been made clear by the respondents in the said order that only a minor penalty of 'Censure' was ordered and the effect of which is restricted up to the period of the the happening specified, however, which is not to be construed as a disqualification for promotion. According to the learned counsel for the petitioner, he should have been elevated and further argued that there was no cloud on the petitioner, when the order of elevation was made on 15.04.2011.

8. It is seen that the the petitioner was issued with a charge memorandum, dated 04.06.2005 for imposing minor penalty under Rule 16 of CCS (CCA) Rules, 1965. The Inquiry Officer concluded that the charges levelled against the petitioner was not proved, however, the Disciplinary Authority, having disagreed with the findings of the Inquiry Officer imposed a penalty of "Censure", vide its Penalty Advice, dated 01.06.2007. In the meantime, the third respondent released a Seniority List, dated 24.03.2006, wherein the petitioner stood at No.14 out of 39 borne in the seniority list pertaining to Highly Skilled under Fitter Trade. Thereafter, the petitioner sent a representation, dated 28.04.2011, however, the same rejected by

the order, dated 04.08.2011 stating that the petitioner was under 'cloud' from 04.06.2005 till 02.06.2007, as the disciplinary proceeding ended in imposing minor penalty of "Censure".

9. In this regard, a decision in DIG of Police v. V.Rani, reported in 2011 (3) CTC 129, a Full Bench of this Court held as follows :

"During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion and to that extent, the finding of the Division Bench in Subramanian v. Government of Tamil Nadu, rep. by its Secretary, Chennai and others, 2008 (5) MLJ 350, stands overruled. It is needles to state after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible."

10. The Hon'ble Supreme Court has ruled in the decision referred to above, reported in 2011 (3) CTC 129 that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if he is otherwise eligible.

11. The Disciplinary Authority passed an order, dated 01.06.2007 awarding Censure. Even prior to that, on 24.03.2006, the third respondent released a Seniority List, wherein the petitioner stood at No.14 out of 39 borne in the seniority list pertaining to Highly Skilled under Fitter Trade. Consequent to the implmentation of the recommendations of the VI CPC and the notification of Civilians in Defence Services (Revised Pay) Rules, 2008 and the amendment issued thereto, the Highly Skilled Grade has been bifurcated equally (50% + 50%) into two distinct grades namely Highly Skilled Gr.I and Highly Skilled Gr.II. It is not in dispute that the Enquiry Officer held that the charges levelled against the petitioner was not proved, however, it was decided by the respondents 1 to 3 that it is true, whereby awarded lesser punishment of Censure. Even the currency period of punishment was over, when the respondents were considering the promotion of the petitioner, however, the petitioner was placed in Sl.No.1 in the Highly Skilled Grade II (i.e., in the lower grade), despite his name finds higher in the seniority list published earlier on 24.03.2006. However, the Central Administrative Tribunal, has not considered the legal aspect properly in the impugned orders, dated 10.09.2014 passed in O.A.No.1542 of 2012; and order, dated 02.01.2015 passed in Rev.P.No.64 of 2014 and therefore, we are of the considered view that the writ petition has to be allowed, to meet the ends of justice.

11. In the result, this writ petition is allowed and the order, dated 10.09.2014 made in O.A.No.1542 of 2012 and in R.A.No.64 of 2014, dated 02.01.2015 are set aside. The first respondent is directed to promote the petitioner to the post of Highly Skilled Grade I in PB-1 (5200-20200) + GP 2800 w.e.f. 01.01.2006 with all consequential benefits including monetary benefits on par with his immediate junior, who has been given the benefit. The respondents 1, 2 and 3 are directed to comply with the said order, within a period of Four weeks from the date of receipt of a copy of this order. However, no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The General Manager
Union of India,
Heavy Alloy Penetrator Project,
Trichy - 25.
2. The Ordnance Factory Board, Rep by its
Director General, Ayudh Bhavan,
10-A, S.K.Bose Road,
Calcutta - 700 001.
3. The Deputy General Manager (Administration)
Heavy Alloy Penetrator Project,
Trichy - 25.
4. The Registrar
Central Administrative Tribunal
Madras Bench - 104.

+1 cc to M/s.R.Pandian, Advocate, sr.4266
+1 cc to B.S.Namo Narayanan, CGSPC, sr 4205

W.P.No.29382 of 2015

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kra 04.02.2016