

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2016

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR. JUSTICE V. BHARATHIDASAN

W.A. No.460 of 2016 and C.M.P. No.6488 of 2016

- 1 State of Tamil Nadu
represented by its Secretary to Government
Highways and Small Ports Department
Chennai - 9
 - 2 The Chief Engineer (General)
Highways
Chepauk
Chennai 600 005
- Appellants/Respondents
- vs.
- P. Pandiaraj Respondent/Petitioner

Writ Appeal preferred under Clause 15 of the Letters Patent against the order dated 20.02.2012 made in W.P. No.19392 of 2009.

WP.19392/09:- Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records connected in Letter No. 375//HK1/2009-3 dated 28.8.2009 and G.O (3D) No.73, Highways (HL.1) Department, dated 6.5.2002, passed by the 1st respondent and quash the same and direct the respondents to include the name of the petitioner in the panel for promotion to the post of Assistant Divisional Engineer for the year 1999-2000 and promote the petitioner as Assistant Divisional Engineer with all consequential benefits including the further promotion as Divisional Engineer.

For appellants Mrs. A. Srijayanthi
Special Government Pleader

For respondent Mr. G. Elanchezhiyan - No appearance

JUDGMENT

(delivered by SATISH K. AGNIHOTRI, J.)

The challenge made in this intra-Court appeal is to the order dated 20 February 2012 passed in W.P. No.19392 of 2009.

2 For the sake of brevity and clarity, the parties are referred to as per their litigative status in the instant intra-Court appeal.

3.1 Shorn of the minute details, the germane and necessary facts, leading to the filing of this intra-Court appeal are that the respondent was initially appointed as Assistant Engineer in the Highways Department in June 1981. When he was working in the said post, on 14 November 1995, he was issued with a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1955 (for brevity "the Rules") levelling two charges against him. The gist of those charges was that he had not handed over certain M.Books to his successor, thereby, besides deserting his duties and responsibilities as Assistant Engineer, he had also misused his powers and failed to maintain integration and devotion to duty. The Enquiry Officer found both the charges as proved. Eventually, the State Government, vide G.O (3D) No.73, Highways Department dated 06 May 2002, slapped the punishment of censure on the respondent.

3.2 Thereagainst, the respondent preferred the instant writ petition and further, sought a direction to the appellants to include his name in the panel for promotion to the post of Assistant Divisional Engineer for the year 1999-2000 with all consequential benefits, including further promotion as Divisional Engineer.

3.3 The main plank of contention of the appellants before the learned Single Judge was that the respondent's name was not included in the panel for promotion for the years 1999-2000, 2000-2001 and 2001-2002, to the post of Assistant Divisional Engineer, due to the pendency of disciplinary proceedings initiated against him.

3.4 The learned Single Judge, finding that the charges levelled against the respondent were not so serious in nature, inasmuch as no loss was caused to the State exchequer and that in similar circumstances, in W.P. Nos.3558 of 2004, 19144 of 2004 and 22975 of 2005, this Court had held that the charges of such nature ought to have been framed against the delinquents only under Rule 17(a) of the Rules and not under Rule 17(b), which had become final and also implemented by the Government, set aside the order impugned therein and disposed of the writ petition, directing the appellants to consider the respondent's

claim for being promoted to the post of Assistant Divisional Engineer, on par with his juniors, as sought by him, if he is otherwise eligible for such promotion.

3.5 Feeling aggrieved by the said order passed by the learned Single Judge, the State has come up with this intra-Court appeal.

4 The primordial contention urged on the side of the appellants is that as per Letter No.248, Personnel and Administrative Reforms Department dated 20 October 1997, which prescribes detailed guidelines for promotion, the respondent could not be promoted due to pendency of disciplinary proceedings initiated against him.

5 The issue that crops up for consideration of this Court in this intra-Court appeal is as to whether the punishment of censure inflicted on the respondent, can act as a stumbling block for his promotion to the post of Assistant Divisional Engineer.

6 The aforesaid issue came up for consideration before a Full Bench of this Court in The Dy. Inspector General of Police, Thanjavur Range, Thanjavur and another vs V. Rani¹. The Full Bench, while answering the reference, inter alia held as under:

"5. Consequently, the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of 'check period' viz., one year in the case of censure and five years in the case other minor punishments is illegal and impermissible under the statutory rules."

7 In view of the aforestated legal position as enunciated by the Full Bench, the issue involved in this intra-Court appeal, as aforestated, is answered in negative. Accordingly, the stand of the appellants that due to pendency of disciplinary proceedings initiated against the respondent, he is not entitled to promotion, as sought by him, falls to ground.

8 The pendency of disciplinary proceedings does not negate consideration for promotion, but defers the consideration awaiting the outcome of the disciplinary proceedings. In the case on hand, departmental proceedings has resulted into imposition of censure, which does not create a stumbling block for consideration of the respondent's name for promotion. The consideration relates back to the date when the employee became eligible. In such view of the matter, we are of the considered

1 2011 (3) CTC 129

view that the learned Single judge has rightly come to the conclusion that the respondent was entitled to consideration for promotion, as on the date he became eligible along with his juniors in the service.

As a sequitur, upholding the order of the learned Single Judge, this intra-Court appeal is dismissed. No costs. Connected Miscellaneous Petition is closed.

cad/vvk

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1 The Secretary to Government
Highways and Small Ports Department
State of Tamil Nadu
Chennai - 9

2 The Chief Engineer (General)
Highways
Chepauk
Chennai 600 005

+ 1 cc to Mr. G. Elanchezhiyan, Advocate Sr 23739

+ 1 cc to The Govt.Pleader, Sr 23467

KR/28/4/16

W.A. No.460 of 2016

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