

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2016

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.41333 of 2016
and
W.M.P.No.35278 of 2016

I.Kader Batcha

... Petitioner

Vs.

The Principal Secretary to Government,
Home (Pol.2) Department,
Secretariate,
Chennai-600 009.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondent to promote the petitioner to the post of Additional Superintendent of Police with effect from the date of promotion given to his juniors by adopting the same yardstick adopted for the petitioner's juniors as evidenced from G.O.(Ms).No.676, Home (Police.1A), Department, dated 22.09.2016.

For Petitioner : Mr.M.Srividhya

For respondent : Mr.K.Dhananjayan,
Special Government Pleader

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Mandamus, directing the respondent to promote the petitioner to the post of Additional Superintendent of Police with effect from the date of promotion given to his juniors by adopting the same yardstick adopted for the petitioner's juniors as evidenced from G.O.(Ms).No.676, Home (Police.1A), Department, dated 22.09.2016.

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

2-1.The petitioner joined Tamilnadu Police Subordinate Service as Sub-Inspector of Police on 27.09.1987 and he completed his probation at Saptur Police Station in Madurai District. He was selected for promotion to the rank of Inspector of Police at No.75 in the order of preference

vide the Memorandum in Rc.No.193834/NGB I (1)/97, dated 14.03.1998, issued by the Director General of Police, Chennai. He assumed responsibility as Inspector of Police, Allinagaram Police Station at Theni District on 20.05.1998 and thereafter, he was promoted to the post of Deputy Superintendent of Police by an order passed by the Government in G.O.(Ms).No.437, dated 29.05.2015 and he has been serving in the said post.

2-2.It is further stated by the petitioner that during the year 2002, he had been posted as the Inspector of Police, Civil Supplies CID, Trichy Unit on 03.01.2002 and as discharging his responsibility, he had pursued the Black Marketers and adulterers by raiding their dens at great risks. While so, a false complaint was lodged against the petitioner by an offender/complainant and on that basis, a criminal case in Crime No.8 of 2002 was filed by the Vigilance and Anti-Corruption Department as against the petitioner. Subsequently, the petitioner has been placed under suspension. Challenging the suspension order, the petitioner had filed O.A.No.2753/2002 before the concerned Tribunal and the said Original Application was disposed on 21.10.2002 by the Tribunal with a direction to the respondent to post the petitioner in a non-sensitive post. As such, the petitioner was reinstated into service.

2-3.It is further stated by the petitioner that in the said criminal case, charge sheet was filed on 01.12.2003 and it was taken on file as Special Case No.46/2011 on the file of the learned Chief Judicial Magistrate, Trichirapalli. Subsequently, the Deputy Superintendent of Police, Civil Supplies, CID, Villupuram, who is neither the petitioner's appointing authority nor disciplinary authority, issued a charge-memo against the petitioner under Rule 3(b) of the Tamil Nadu Police Subordinate Service (D & A) Rules, vide PR.No.2/2004, dated 05.05.2004. Challenging the said charge-memo, the petitioner had filed a writ petition in W.P.No.29642/2004 before this Court and this court issued a direction to the Disciplinary Authority to dispose of the enquiry within a period of three months. According to the petitioner, the three months period fixed by this Court expired on 07.10.2013, but the Disciplinary Authority had not complied with the direction given by this Court. It is further stated by the petitioner that two other charge-memos were also issued against the petitioner in PR.No.02/2004, dated 05.05.2004 and PR.No.06/2007, dated 13.11.2007 and the said charge-memos were challenged by the petitioner before this Court in W.P.No.31912 of 2013 and this Court passed an interim order dated 29.11.2013 directing the authorities to promote the petitioner temporarily as Deputy Superintendent of Police.

2-4.It is further stated by the petitioner that he had also filed a writ petition in W.P.No.4554/2014 challenging the subsequent charge-memo on the ground that it was issued

after the lapse of 13 years and the petitioner was acquitted in the criminal case by the competent Criminal Court. The said writ petition was allowed by this Court on 06.01.2015, against which a Writ Appeal has been preferred by the Department and it is pending; however, no interim order was passed in the Writ Appeal.

2-5. Now, it is the grievance of the petitioner that his junior Mr.K.Paranthaman, who was promoted to the post of DSP on 29.06.2009, is now promoted to the post of Additional Superintendent of Police by order in G.O.(Ms).No.676, Home (Pol.1A) Department, dated 22.09.2016; but, the petitioner was not promoted to the post of Additional Superintendent of Police. Hence, the petitioner has come forw

3. I have heard the learned counsel appearing for the petitioner as well as the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

4. Considering the facts and circumstances of the case and the submissions made on either side, without going into the merits of the claim made by the petitioner, this Court directs the petitioner to given a fresh representation to the respondent with regard to his promotion to the post of Addl Superintendent of Police, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, the respondent is directed to consider the same and to pass appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter.

With the above directions, the writ petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssv

To

The Principal Secretary to Government,
Home (Pol.2) Department,
Secretariate, Chennai-600 009.

+1cc to Mr.M.Srividhya, Advocate, S.R.No.69118

+1cc to the Government Pleader, S.R.No.69144

W.P.No.41333 of 2016 and

W.M.P.No.35278 of 2016

MV (CO)

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CA(20/12/2016)