

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.01.2017

Delivered on: 23.02.2017

Coram

The Honourable Mr. Justice K.K.SASIDHARAN
and

The Honourable Mr. Justice V.PARTHIBAN

W.P.No.21120 of 2014
and M.P.No.1 of 2014

- 1 The Government of Tamil Nadu
rep. by its Principal Secretary to
Government Environment and Forests
Department Secretariat Chennai-9.
- 2 The Selection Committee for
Appointment to Selection Grade/ Promotion to
the Post of Conservator of Forests rep. by
Prl Secy to Govt Environment & Forests Dept
Secretariat, Chennai-9. ..Petitioners
- versus
- 1 V.Naganathan IFS
2 The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests New
Delhi
- 3 Central Administrative
Tribunal Madras Bench
Rep. by the Registrar,
High Court Buildings,
Chennai-104. .. Respondents

Prayer: These Writ Petitions are filed under Article 227 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the records relating to the impugned order dated 12.10.2012 made in O.A. No.6 of 2012 and Review Application No.6 of 2013 in O.A. No.6 of 2012 dated 4.12.2013 on the file of the Central Administrative Tribunal, the third respondent herein and quash the same.

For Petitioners: Mr. A.N.Thambidurai, Spl.GP(F)

For Respondents: Mr.T.Mohan for R1
Mr.J.Madanagopal Rao, SCGSC
for R2

ORDER

V.PARTHIBAN, J.

This Writ Petition has been filed against the order passed by the Central Administrative Tribunal (in short, 'the Tribunal') in O.A.No.6 of 2012 and Review Application No.6 of 2013, filed by the first respondent.

2. For the sake of clarity, the first respondent herein will be referred as 'the applicant' while the petitioners herein as 'the respondents'.

3. The applicant belonging to Indian Administrative Service, viz., Indian Forest Service, has approached the Tribunal, seeking for the relief:

"To direct the respondents 1 and 2 to open the sealed cover related to the applicant for appointment to Selection Grade in the appropriate Scale of pay notwithstanding and without reference to the disciplinary proceedings initiated by the Government in Gov.Lr.No.24286/FR.Spl.A/2006-1, Environment and Forest Department, dated 18.12.2006 and to appoint him to Selection Grade in the appropriate scale of pay with effect from the date on which he has become eligible for the same and to include his name in the appropriate place in the ensuing panel for promotion as Conservator of Forest and to promote him as Conservator of Forests, if he is otherwise found suitable with all consequential service and monetary benefits."

4. According to the applicant, he was entitled for selection made in the year 2009 on the basis of qualifying service of 13 years as IAS Officer and his year of allotment being 1996 in IFS cadre. However, he could not be appointed to the selection grade in view of the pendency of disciplinary action initiated vide proceedings dated 8.12.2006. The enquiry which conducted into the charges framed against the applicant, was also completed and a report was submitted on 8.12.2008, holding that the charges were not proved. However, the disciplinary authority discarded the findings of the Inquiry Officer and called for explanation from the applicant vide proceedings dated 4.8.2009. The applicant also submitted his explanation on 5.9.2009 and the matter was referred to the UPSC for its advise and thereafter, no follow-up action was forthcoming and the disciplinary matter was kept pending. Since the matter was unduly delayed, the applicant was constrained to move the Tribunal by way of the above said Original Application for the said relief which was extracted supra.

5. The learned Tribunal, after taking note of the submissions made on behalf of either parties and placing

reliance upon the decision of the Hon'ble Supreme Court reported in "State of Punjab versus Chamanlal Goyal" and also on the basis of other orders passed by the Tribunal in O.A.Nos.751-754 of 2004, etc., disposed of the Original Application, with the following directions:

"The respondents are directed to open the sealed cover and consider the name of the applicant for appointment to the Selection Grade for the post of Conservator of Forests from the date when his juniors are granted the selection grade without reference to the disciplinary proceedings initiated against the applicant with consequential monetary benefits also.

ii) The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order."

6. As against the above order passed in the Original Application, the applicant moved the Tribunal once again by filing a Review Application in R.No.6 of 2013 stating that there was an error in the final direction passed by the Tribunal, viz., that the prayer was sought for only for appointment of selection grade and not for the post of Conservator of Forests which is higher post and which relief he did not originally claim and it can only be a consequential relief.

7. Taking note of the above submission of the applicant, the Review Application was partially allowed with the following directions:

"i) Open the sealed cover related to the applicant and consider his name for appointment to Selection Grade in appropriate Scale of Pay notwithstanding and without reference to the disciplinary proceedings initiated against the applicant and to appoint him to Selection Grade as such from the date he has become eligible for the same and to include his name if he is otherwise qualified in the appropriate place in the ensuing panel on par with his immediate junior for promotion as Conservator of Forests and to promote him as such with all consequential monetary benefits.

ii) The above exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order."

8. As against the orders passed by the Tribunal both in the Original Application and the Review Application, the respondents filed the present Writ Petition.

9. This Court while admitting the Writ Petition, granted interim stay of the orders passed by the learned Tribunal and in

view of the interim stay, it appeared that the directions given by the Tribunal could not be implemented. In the meanwhile, pending disciplinary proceedings culminated into imposition of penalty vide proceedings dated 8.3.2013, withholding of an increment of pay for a period of one year without cumulative effect. The said punishment had come to end on 30.6.2014 and by proceedings dated 6.2.2015 in G.O.Ms.No.17 Environment and Forests (FR.Spl.A) Department, dated 6.2.2015, he was appointed to the Selection Grade with effect from 01.07.2014 and thereafter, by proceedings dated 23.02.2015 in G.O.(Rt.)No.143, the applicant has been promoted to the post of Conservator of Forests.

10. From the above, it could be seen that although the applicant had obtained favourable orders from the Tribunal, the same could not be implemented for the aforesaid reasons. However, on completion of the punishment period, the applicant had been granted selection grade and further promotion to the post of Conservator of Forests. Although the applicant has been bestowed the benefit of selection grade and promotion to the post of Conservator of Forests, de hors the direction issued by the learned Tribunal, it should be noted that the learned Tribunal has disposed of both the Original Application and Review Application without properly appreciating the legal position with regard to promotion of the Officer during pendency of the disciplinary against him. The reliance placed upon by the learned Tribunal on the decision rendered by the Hon'ble Supreme Court in "State of Punjab versus Chamanla Goyal", is not correct for the reason that the Hon'ble Supreme Court has directed the consideration of the officer concerned for promotion without taking into consideration the charges or the pendency of the enquiry against him, only on the basis of particular facts and circumstances of that case. Such directions passed by the Hon'ble Supreme Court does not amount to statement of law and hence, the same cannot be applied in all run of the mill cases.

11. Even if the officer is going to be considered for promotion without reference to the pending disciplinary action pending against him/her, that only lead to travesty of administrative balance and will be contrary to various mandatory instructions issued by the Government of India on the subject matter and such directions pending disciplinary action would contrary to the sealed cover procedure to be adopted in such cases as mandated by the relevant instructions issued by the Union of India. In such view of the matter, the directions passed by the learned Tribunal without carving out any exceptional circumstances warranting extraordinary intervention, cannot be countenanced in law. The learned Tribunal, cannot, as a matter of fact, interfere with the matters of promotion when the disciplinary action was pending against the officers unless the same is shown abnormally delayed without any valid exception and with mala fide intention to victimize any officer.

12. With the above observation and in view of the subsequent development of the relief being granted to the applicant by the official respondents themselves, we do not see any issue pending adjudication before us.

Accordingly, The Writ Petition is closed as no orders are required. No costs. Consequently, connected MP is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

- 1 The Union of India
Rep. by its Secretary to Government
Ministry of Environment and Forests New
Delhi
- 2 The Central Administrative
Tribunal Madras Bench
Rep. by the Registrar,
High Court Buildings,
Chennai-104.

+1 cc to Mr.J.Madanagopal rao,advocate,sr.11615

+1 cc to Govt.Pleader,sr.11805

+1 cc to Mr.M.Ravi,advocate,sr.12243.

skv(co)
krd 27/3

W.P.No.21120 of 2014

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