

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE M.GOVINDARAJ

Writ Appeal No.386 of 2010

T.Joy Thomas

... Appellant/Petitioner

vs.

1. The Director General,
Directorate of Central Reserve Police Force,
C.G.O. Complex,
Lodhi Road, New Delhi.
2. The Inspector General of Police,
Central Reserve Police Force,
Southern Sector,
Banjara Hills, Hyderabad.
3. The Deputy Inspector General of Police,
Group Centre,
Avadi, Chennai 600 065. ... Respondents/Respondants

Writ Appeal under clause 15 of the Letters Patent against the order passed in W.P.No.16198 of 1999, dated 02.02.2009. Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to promote the petitioner as per the approved list 8/94, dated October 1996 with all monetary benefits.

For Petitioner : Mr.M.Md.Ibrahim Ali

For 2nd Respondent : Dr.D.Simon

JUDGMENT

(Judgement of this Court was made by S.MANIKUMAR, J)

Challenge in this appeal is to an order of dismissal of W.P.No.16198 of 1999, dated 02.02.2009, by which, the writ Court declined to issue a writ of Mandamus, directing the respondents herein to promote the appellant, as Inspector of Police, CRPF,

as per the approved list, 8/94, dated October, 1996, with all monetary benefits.

2. It is the case of the appellant that on 08.12.1988, he was appointed as Sub-Inspector of Police, in the Central Reserve Police Force (In short, "CRPF") and worked in several stations. During October' 1996, an approved list "E" (GD) vide 8/94, was prepared, for the purpose of promoting Sub-Inspectors of Police, to the post of Inspectors of Police. In the said list, the appellant was placed at Sl.No.3. However, the appellant was issued with a charge memo, dated 25.09.1996, in terms of section 11(1) of the CRPF Act, 1949. After completion of enquiry into two charges, relating to disobedience of the orders of the superior, on 13.02.1998, the appellant was imposed with a fine of one month pay and allowances. On appeal, the Inspector General of Police, Central Reserve Police Force, Southern Sector, Hyderabad, 2nd respondent herein, vide order, dated 23.11.1998, has modified the punishment of fine into one of censure. The appellant has made a representation, dated 10.5.1999 to the Director General, CRPF, New Delhi, 1st respondent herein, stating that his juniors have been promoted from the approved list 8/94 and whereas, because of censure, he was not given the promotion. According to him, the representation remained unanswered. Hence, he filed W.P.No.16198 of 1999, for the reliefs, stated supra.

3. Before the writ Court, the Deputy Inspector General of Police, Group Centre, Avadi, Chennai, third respondent herein, has filed a counter affidavit, contending inter alia that the appellant was not promoted, due to pendency of a departmental enquiry and on conclusion, he was not exonerated of the charges, but imposed with a punishment of censure.

4. The third respondent has further submitted that the Director General, vide letter No.P.VIII.1/95-Estt-II, dated 24.07.1995, has clarified that the personnel, who were brought on approved list, but not promoted, due to pendency of departmental enquiry against them, on conclusion of departmental enquiry, if they were not exonerated of the charges, levelled against them, they shall not be promoted on the basis of the recommendations of the earlier DPCs (approved list) and such personnel shall be permitted to appear in the respective approved list in the first available opportunity.

5. It was the further contention of the 3rd respondent that the Director General, vide letter No.P.VII.10/98-Estt-II (P/Cell), dated 18.05.1998, cancelled the allotment order, dated 16.10.96 and signal, dated 5.12.1996 (by which, the appellant was allotted on promotion as Inspector) and further directed to

take necessary action, as per the instructions, contained in the Director General's letter No.P.VIII.I/95-Estt-I, dated 24.7.1995. Accordingly, the Deputy Inspector General of Police, CRPF, Chennai, 3rd respondent herein, vide O/o.No.P.VII.II/98-CO, dated 03.06.1998, removed the appellant from the approved list E(GD) - 8/94.

6. The 3rd respondent herein further contended that the appellant appeared in approved list (E/GD)-2/99 afresh and passed the promotion test. The Director General, vide letter, dated 15.3.1999, has promoted the appellant and he was allotted to 58 Bn, on promotion as Inspector of Police. The appellant joined 58 Bn, on promotion on 13.4.1999.

7. After considering the rival submissions, the writ Court, vide order, dated 02.02.2009, dismissed the writ petition, as follows:

"5. It is also stated that as against the punishment of censure, the petitioner's appeal preferred to the first respondent was forwarded, vide endorsement, dated 17.9.1999 and the case was under consideration of the first respondent. It is not clear, as to what had happened to the said representation. But, in any event, the prayer sought for, by the petitioner cannot be countenanced by this Court. This Court cannot grant any direction contrary to the rules and regulations prevailing in the respondent CRPF."

8. Inviting the attention of this Court to the inclusion of the appellant's name in the approved list "E" (GD) vide 8/94, prepared in October' 1996, Mr.M.Md.Ibrahim Ali, learned counsel for the appellant submitted that as per Paragraph 4, promotion of the Sub-Inspector of Police, mentioned in the said list, was subject to the condition that they should be free from vigilance angle and no enquiry was pending against them. It was further stated that as per the promotion list, personnel, undergoing punishment of withholding of increment, were not eligible for promotion. He therefore submitted that when there was no pending vigilance enquiry and punishment of withholding of increment, during October' 1996, promotion of the appellant to the Inspector of Police, CRPF, ought not to have been denied.

9. Learned counsel for the appellant further submitted that censure, being a minor punishment, ought not to have been held against the appellant for promotion. In support of the above contention, he relied on a Full Bench decision of this High Court in Deputy Inspector General of Police v. V.Rani, reported in 2011 (3) CTC 129.

10. Without prejudice to the above, learned counsel for the appellant contended that as against the punishment of censure, the appellant has made a representation, dated 17.09.1999, to the Director General, CRPF, New Delhi and that the appellant would be satisfied, if a direction is given to the said authority, for disposal of the said representation, dated 17.09.1999, within a time frame.

11. Dr.D.Simon, learned counsel appearing for the 2nd respondent, made submissions to sustain the order of the writ Court.

Heard the learned counsel appearing for the parties and perused the materials available on record.

12. As regards the last contention of Mr.M.Md.Ibrahim Ali, learned counsel for the appellant that without going into the merits of the case, it is suffice to issue a direction to the Director General, CRPF, New Delhi, 1st respondent herein, to dispose of the representation, dated 17.09.1999, made against the punishment of censure, there is long lapse of time, nearly 17 years. Further, when the representation, stated to have been made in the year 1999, has not been considered by the authorities, the appellant ought to have approached the Court, within a reasonable time, seeking for a direction to dispose of the same. For the abovesaid reasons, we are not inclined to issue any direction, as prayed for and on the contra, proposed to consider the appeal, on its merits.

13. The appellant has been included at Sl.No.3 in the approved list "E" (GD) vide 8/94, prepared during October' 1996, for promotion to the post of Inspector of Police, CRPF. At paragraph 4 of the said list, it is clearly stated that, "Promotion of above Sub-Inspectors of Police, is subject to the condition that they are free from vigilance angle and no enquiry is pending against them. Personnel who are undergoing punishment of withholding of increment are not eligible for promotion."

14. Though Mr.M.Md.Ibrahim Ali, learned counsel for the appellant contended that during October' 1996, there was no vigilance enquiry and that when there was no punishment of withholding of increment, the appellant ought to have been promoted as Inspector of Police, this Court is not inclined to accept the said contention, for the reason that while considering the case of the appellant, along with others, for promotion to the post of Inspectors of Police, the authorities have consciously stated that there should not be any enquiry pending against them. Charges were levelled against the

appellant, vide Memo.No.PVIII-5/96-Estt.3, dated 25.09.1996 and the same are extracted hereunder:

"Article-I: That No.881550447 SI(GD) Joy Thomas of 18 Bn. CRPF. committed an act of misconduct and disobedience of order, as a member of the Force, u/s. 11(1) CRPF Act, 1949, in that, he failed to report for duty on expiry of 60 days EL upto 19.09.1995, granted in conjunction, with his repatriation from SPG to 18 Bn. CRPF, and continues to overstay leave inspite of specific directions, which is prejudicial to good order and discipline of the Force.

Article-II: That No.881550447 SI(GD) Joy Thomas of 18 Bn. CRPF. committed an act of misconduct/disobedience of order, in his capacity as a member of the Force, u/s. 11(1) CRPF Act, 1949, in that, he failed to comply with directions of Commandant-18 Bn. CRPF to report for duty on expiry of leave granted upto 19.09.1995 on the plea of illness of himself/his wife, and disobeyed the orders of Commandant, 18 Bn. directing him to report to GC, CRPF Pallipuram, for second medical opinion without sufficient cause and cogent reasons."

15. It is well settled that pendency of disciplinary proceedings is a bar for promotion. Reference can be made to the following decisions of the Supreme Court.

(i) In *Union of India v. K.V.Jankiraman* reported in AIR 1991 SC 2010, the Hon'ble Supreme held as follows:

"The conclusion no. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions."

(ii) In *C.O.Arumugam and others VS State of Tamil Nadu and others* reported in 1991 Supp. (2) SCC 199, wherein the Hon'ble Supreme Court held as follows:

"The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be

considered for promotion if they are exonerated or acquitted from the charges. if found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted."

16. In the light of the above decision, though the appellant has been included in the approved list "E" (GD) vide 8/94, prepared during October' 1996, denial of promotion as Inspector of Police, due to pendency of charge, cannot be said to be erroneous.

17. As regards the other contention that censure imposed in the year 1998, ought not to have been held against the appellant and reliance placed on Rani's case (cited supra), it is to be noted that Rani's case was decided, with reference to the validity of the State Government Orders and Circulars and after going through the statutory provisions and powers of the authorities, a Hon'ble Full Bench of this Court held that the Government Orders and Circulars issued by the State Government for denying promotion, have no statutory force. The said judgment, in strict sense, cannot be made applicable to the case on hand, where punishment of censure, has been imposed, under Section 11 of the CRPF Act, 1949.

18. On the submission that censure is a minor penalty and therefore, the respondents ought not to have denied promotion to the appellant as Inspector of Police, this Court deems it to consider the meaning of the word, "Censure". In Chamber's Dictionary, the word 'Censure' is defined to mean, 'an unfavourable opinion or judgment; blame; to form or give an opinion or judgment of; to blame: to condemn as wrong: to sentence'. In the New Lexicon Webster's Dictionary (Deluxe Encyclopedic Edition), 'Censure' means, 'adverse criticism, blame'. WHARTON'S Law Lexicon defines 'Censure' as 'a Judgment which condemns some book, person or action; more particularly a reprimand from a superior'.

19. Ministry of Home Affairs, Government of India, has issued Official Memorandum, vide OM.No.39/21/56-Estt(A), dated 13.12.56, explaining the distinction between Censure and Warning and the same is extracted hereunder:

"An order of "Censure" is formal and public act intended to convey that the person concerned has been guilty of some blame-worthy act or commission for which it has been found necessary to award him a formal punishment, and nothing can amount to a "censure" unless it is intended to be such a formal punishment

and imposed for "good and sufficient reason" after following the prescribed procedure. A record of the punishment so imposed is kept on the officer's confidential roll and the fact that he has been 'censured' will have its bearing on the assessment of his merit or suitability for promotion of higher posts.

There may be occasions on the other hand when a superior officer may find it necessary to criticise adversely the work of an officer working under him (e.g., point out negligence, carelessness, lack of thoroughness, delay etc.) or he may call for an explanation for some act or omission and taking all circumstances into consideration, it may be felt that while the matter is not serious enough to justify the imposition of the formal punishment of 'censure', it calls for some informal action such as the communication of a written warning, admonition or reprimand. If the circumstances justify it, a mention may also be made of such a warning, etc. in the officer's confidential roll. However, the mere fact that it is so mentioned in the character roll does not convert the warning etc. into 'censure'. Although such comments, remarks, warning etc., also would have the effect of making it apparent or known to the person concerned that he has done something blame-worthy and, to some extent, may also effect the assessment of his merit and suitability for promotion, they do not amount to the imposition of the penalty of 'censure' because it was not intended that any formal punishment should be inflicted.

The fact that a mere informal 'warning' cannot be equated to a formal 'censure', should not, however, be taken as tantamount to suggesting that a 'written warning may be freely given without caring whether or not it is really justified. It is a matter of simple natural justice that written warnings, reprimands etc. should not be administered or placed on an officer's confidential records unless the authority doing so is satisfied that there is good and sufficient reason to do so. Paragraph 6 of the Home Ministry's Office Memorandum No.51/5/54/Ests.(A), dated the 27th January, 1955 provides detailed guidance in the matter of recording adverse remarks in confidential reports. It may be reiterated here that in the discharge of the responsible task of recording the confidential reports, every reporting officer should be conscious of the fact that it is his duty not only to make an objective assessment of his subordinate's work and qualities but also to see that he gives to his subordinates at all

times the advice, guidance and assistance to correct their faults and deficiencies. If this part of the reporting officer's duty has been properly performed there should be no difficulty about recording adverse entries because they would only refer to the defects which have persisted in spite of reporting officer's efforts to have them corrected. If after having taken such care, the reporting officer finds that for the purpose of truly objective assessment mention should be made of any warning, admonition etc., issued, especially those which have not produced the desired improvement, it is his right and duty to so mention them. In the process of bringing the defects to the notice of person concerned where an explanation is possible an opportunity to do so should be given. This cannot, however, be equated to the formal proceedings required to be taken under Rule 55-A (now Rule 16) of Central Civil Services (Classification Control and Appeal) Rules nor the warning given amounts to the imposition of a formal penalty."

20. The Department of Personnel and Administrative Reforms, vide O.M.No.22011/2/78-Estt.(A), dated 16.02.1979, has stated as follows:

"(ii) Where a departmental proceeding has been completed and it is considered that the officer concerned deserves to be penalised, he should be awarded one of the recognised statutory penalties as given in Rule 11 of the CCS (CCA) Rules, 1965. In such a situation, a recordable warning should not be issued as it would for all practical purposes, amount to a "censure" which is a formal punishment and which can only be awarded by a competent disciplinary authority after following the procedure prescribed in the relevant disciplinary rules. The Delhi High Court has, in the case of Nadhan Singh Vs. Union of India also expressed the view that warning kept in the CR dossier has all the attributes of "censure". In the circumstances, as already stated, where it is considered after the conclusion of disciplinary proceedings that some blame attached to the officer concerned which necessitates cognizance of such fact the disciplinary authority should award the penalty of "censure" at least. If the intention of the disciplinary authority is not to award a penalty of "censure", then no recordable warning should be awarded. There is no restriction on the right of the disciplinary authority to administer oral warnings or even warnings in writing which do not form part of the

character roll.

(iii) Where the departmental proceedings have ended with the imposition of a minor penalty, viz, censure, recovery of pecuniary loss to the Government, withholding of increments of pay and withholding of promotion, the recommendation of the DPC in favour of the employee, kept in the sealed cover, will not be given effect to. But the case of the employee concerned for promotion/confirmation may be considered by the next DPC when it meets after the conclusion of the departmental proceedings. If the findings of the DPC are in favour of the employee, he may be promoted in his turn if the penalty is that of "censure" or "recovery of pecuniary loss caused to the Government by negligence or breach of orders". In the case of employees who have been awarded the minor penalty of "withholding of increments" or "withholding of promotion" promotion can be made only after the expiry of the penalty.

(iv) If a recordable warning has been issued to an officer as a result of disciplinary proceedings before the issue of this Office Memorandum and the case of the officer concerned for promotion is still under consideration, he should be treated as having been "censured". The officer will also have the right of representation against such warning and such representation shall be dealt with by the competent authority as if it were an appeal under the relevant disciplinary rules."

21. Subsequent instructions of the Director General, CRPF, New Delhi, 1st respondent herein, on the same lines, in letter No.P.VIII.1/95-Estt-II, dated 24.07.1995, referred to, in the counter affidavit, stated supra, has been taken note of, by the Department.

22. The above instructions issued by the Government of India, explaining the scope of censure and as to how, it has to be considered by the Department, while empanelling the candidates for promotion to a selection post, can be applied to the facts on hand. Punishment of censure, as modified vide order, dated 23.11.1998 by the Inspector General of Police, Central Reserve Police Force, Southern Sector, Hyderabad, 2nd respondent herein, cannot be given effect, retrospectively from 25.09.1996, date on which, a charge memo, under Section 11(1) of the CRPF Act, 1949, was issued. After modification of the punishment, the case of the appellant has been considered afresh and that by Director General's proceedings, dated 15.03.1999, the appellant has been promoted as Inspector of Police, CRPF and

allotted to 58 Battalion. He joined the post on 13.04.1999.

23. In the light of the above discussion and decision, this Court is of the view that the appellant has not made out a case for interference.

24. In the result, the Writ Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm

To

1. The Director General,
Directorate of Central Reserve Police Force,
C.G.O. Complex,
Lodhi Road, New Delhi.
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SR(CO)
RS(25/01/2017)

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