



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. (MD) No.12803 of 2017
and WMP No.9904 of 2017

K.Pitchai ... Petitioner

Vs.

1.The Director General of Police
Mylapore, Chennai

2.The Deputy Inspector General of Police
Madurai Range,
In-charge Ramanathapuram Range,
Ramanathapuram District

3.The Commissioner of Police
O/o. The Commissioner of Police
Tirunelveli City
Tirunelveli District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to relieve the petitioner from the post of Deputy Superintendent of Police, In-service Training Centre, Ramanathapuram and consequentially allow the petitioner to join in the promoted post as Additional Deputy Commissioner of Police, Prohibition Enforcement Wing, Tirunelveli City in the light of proceedings of the Additional Chief Secretary to Government in his proceedings in Police Note No.12 dated 30.06.2017 within the period that may be stipulated by this Court.

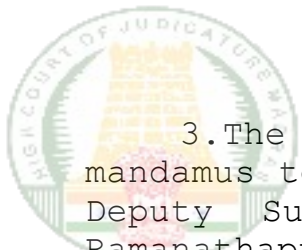
For Petitioner : Mr.M.Ajmal Khan
Senior counsel for M/s.Ajmal Associates

For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

ORDER

By consent of both sides, this writ petition itself is taken up for final disposal.

2. Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the respondents.

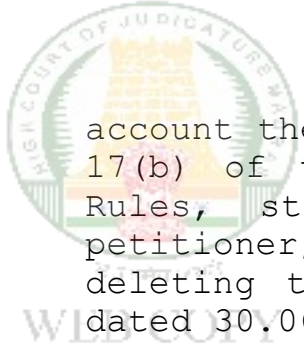


3.The petitioner has come to this Court seeking a writ of mandamus to direct the respondents to relieve him from the post of Deputy Superintendent of Police, Inservice Training Centre, Ramanathapuram, with a consequential direction to allow him to join in the promotional post of Additional Deputy Commissioner of Police, Prohibition Enforcement Wing, Tirunelveli City, based on the order of the temporary promotion issued on 30.06.2017.

4.The learned counsel for the petitioner would submit that while the petitioner was serving as a Deputy Superintendent of Police, Inservice Training Centre, Ramanathapuram District, the first respondent, taking into account the crucial date as 01.04.2016, prepared a temporary panel of Deputy Superintendent of Police fit for promotion to the post of Additional Superintendent of Police for the year 2016-2017 including the name of the petitioner in S.No.1 in G.O.(2D) No.145 Home (Pol.1A) Department dated 31.05.2017.

5. Adding further, it is stated that a perusal of G.O.2D No.145 clearly shows that the Government have carefully examined the proposal of the Director General of Police and in exercise of the power conferred under Section 58 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred to as 'the Act'), the Governor of Tamil Nadu relaxed the explanation III under Section 7(1) of the Act and Section 41(1) of the Act relating to completion of probation to the post of Deputy Superintendent of Police (Category - I) in favour of Deputy Superintendent Police mentioned at Sl.Nos.1 to 19 shown in the Annexure. The Government have approved the temporary panel of Deputy Superintendents of Police fit for promotion to the post of Additional Superintendent of Police (Category - I) for the year 2016-17. Paragraph No.4 also clearly shows that the Director General of Police is also requested to display the level on the National Board and to communicate this order to all the concerned under Section 7(1) of the Act.

6. Again, after one month, the Additional Chief Secretary to Government issued an order of promotion, by posting the petitioner as Additional Deputy Commissioner of Police, Prohibition Enforcement Wing, Tirunelveli City. The aforementioned two proceedings namely, G.O.2D.No.145 and the promotion and posting order dated 30.06.2017 posting the petitioner as Additional Deputy Commissioner of Police, Prohibition Enforcement Wing, Tirunelveli City, clearly show that neither on the crucial date, namely, 01.04.2016 nor on the date of preparing the temporary panel of Deputy Superintendents of Police (Category I) for the year 2016-17 and moreover, even on the date of issuance of the promotion posting order dated 30.06.2017, the petitioner was not served with any charge memo. To the dismay of the petitioner, it is stated that when the promotion and posting order was issued on 30.06.2017 by the Additional Chief Secretary to Government, taking into



account the chargesheet has been prepared on 22.06.2017 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, stated to have been served, on 07.07.2017, on the petitioner, the respondents cannot modify the promotion order by deleting the petitioner from the order of promotion and posting dated 30.06.2017.

7. Taking support from an order passed by me in an unreported decision in Writ Petition No.340 of 2017 dated 19.06.2017, it is further submitted that this Court has already held that the departmental proceedings has ordinarily said to be initiated, when a chargesheet is issued. Admittedly, in the present case, the petitioner was served with the charge memo only on 07.07.2017. Prior to the date of service of the charge memo dated 07.07.2017, the respondents, taking into account the crucial date, ie., 01.04.2016 that there was no charge memo pending or currency of punishment running against the petitioner, prepared a temporary panel list to the post of Additional Superintendent of Police for the category for the year 2015-16, again, on 30.06.2017, the promotion and posting order was issued to 23 police officers including the petitioner. Hence, the respondents cannot withhold the effect of order of temporarily promoting the petitioner on 30.06.2017 to the post of Additional Superintendent of Police.

8. Placing reliance on the order of the Apex Court in the case of **Union of India and others v. Dinanath Shantaram Karekar and others** reported in **1998(7) SCC 569**, the learned senior counsel would further submit that for the purpose of initiation of departmental proceedings by issuing chargesheet, its actual service is essential, as the person to whom the chargesheet is issued is required to submit his reply and thereafter to participate in the disciplinary proceedings. While answering the said proposition, in the aforementioned judgment, it has been held that if an employee is not facing charges or show cause notice or show cause notice served on the crucial date or on the date of consideration for making promotion, the respondents cannot deny the benefit of promotion.

9. By referring to Paragraph No.13 of the counter affidavit filed by the respondents, he concluded his argument stating that it is the own admission of the respondents that charge memo in PR No.33/2017 was served on the petitioner under acknowledgment on 07.07.2017, which shows clearly that neither on the crucial date on 01.04.2017 nor on the date of preparing the panel fit for promotion to the post of Additional Superintendent of Police, on 30.06.2017, till the date of promotion, the petitioner was not facing any charge memo and it is not the case of the respondents that on any of the aforementioned date, the respondents issued any charge memo under 17(b) of the Rules. In view thereof, the order of promotion and posting dated 30.06.2017 issued by the first respondent Additional Chief Secretary to Government should be allowed to take its effect.



10. Per contra, the learned Additional Government Pleader for the respondents, relying on the counter affidavit, would submit that when the crucial postings and promotion order was issued on 30.06.2017, it has been specifically mentioned that the promotion order issued should not be served on the petitioner, if he is undergoing any currency of punishment or any formulated charge under Rule 17(b) of the Rules has been served on him or any enquiry by the Tribunal for disciplinary proceedings is pending.

11. Adding further, in his reply, it is stated that the Superintendent of Police, Thanjavur has sent a charge memo in PR No.33/2017 under Rule 17(b) of the Rules, for the misbehaviour of the petitioner during his tenure at Thanjavur District. The said charge memo dated 22.06.2017 was served in the Range Office on 30.06.2017. Therefore, the clarification and instructions issued by the first respondent office under Rc.No.66996/GB.VII(3)/2016, dated 04.07.2017 stating that as per Paragraph No.II(8) of the Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 pendency of charges framed under 17(b) of the Rules against a member of service shall be a bar for inclusion of his name in the approved list will be legally applicable to the petitioner. At the time of issuance of the charge memo, it has been directed to serve the charge memo on the petitioner and not to serve the promotion order on him. Accordingly, the charge memo dated 22.06.2017 was served on the petitioner with acknowledgment on 07.07.2017 and the promotion orders have not been served on him, which shows that the petitioner cannot claim that he was issued with the promotion and posting order on 30.06.2017. Since the petitioner was not promoted nor issued with the promotion order as per Paragraph II(8) of the Schedule XI of the Act 2016, the pendency of charges framed under Rule 17(b) of the Rules against the member of service being a bar for inclusion of his name in the approved list and as per Paragraph No.1 stating that in case, where specific charge has been framed or chargesheet has been filed in criminal case against a member of service, promotion or appointment shall be deferred till such proceedings are concluded, the petitioner cannot come to this Court to maintain this writ petition, he pleaded.

12. I have heard the rival submissions and perused the records carefully.

13. It is true that the petitioner has not been served with a copy of the promotion and posting order dated 30.06.2017. However, on 01.04.2016 being the crucial date, the respondents have found him eligible and fit for promotion to the post of Additional Superintendent of Police for the year 2016-2017. Therefore, the Additional Chief Secretary to Government in his proceedings dated 30.06.2017 prepared a temporary panel for the

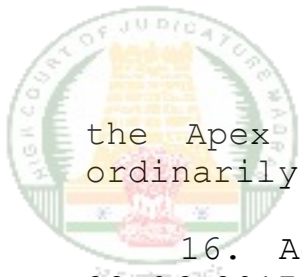


post of Additional Superintendent of Police and posted him as Additional Deputy Commissioner of Police, Prohibition Enforcement Wing at Tirunelveli City. Even prior to the order of promotion and posting, a panel was also drawn on 31.05.2017, since on the crucial date is 01.04.2016 as admitted by both parties, the petitioner had not suffered any charge memo and even on the date of preparing the panel fit for promotion to the post of Additional Superintendent of Police on 31.05.2017, there was no charge memo prepared or pending or served on the petitioner. Hence, it is not known how the respondents can withhold the temporary promotion and posting order dated 30.06.2017 issued to the petitioner as Additional Deputy Commissioner of Police, Prohibition Enforcement Wing, Tirunelveli City.

14. A similar and identical issue came up for consideration before me in W.P.No.340/2017 dated 19.06.2017 (R.Gnanasekar v. State of Tamil Nadu and others), in the said case, the name of the petitioner therein for the inclusion in the temporary panel of Joint Commissioner fit for promotion for the post of Additional Commissioner was included in G.O.Ms.No.109, Tourism, Culture and Endowment (HR & CE) 2-2) Department dated 17.02.2015. Based on his inclusion in the panel of Joint Commissioner, the Government also issued G.O.(Pa) No.71, Tourism, Culture, and Endowment Department (Arce) 2-2) Department dated 11.05.2015 promoting him as Additional Commissioner and he also joined duty as Additional Commissioner on 28.05.2015. Subsequently, he was reverted to the lower post of Joint Commissioner on 30.12.2016 without any enquiry. Challenging the order of reversion, inter alia, that no notice was given to him nor an enquiry was conducted, a writ petition was filed. During the pendency of the said writ petition, as an afterthought, a charge memo dated 05.05.2007 was issued. Taking strength of the charge memo and the conditions mentioned in Schedule XI Part A of the Tamil Nadu Government Servants (Conditions of Service) Act 2016, which states that in case where specific charges have been framed or chargesheet has been filed in a criminal case against the member of service, promotion or appointment of such member of service shall be deferred till such proceedings are concluded until a specific order is passed by the Court and no appeal is filed thereon, it was pleaded that promotion cannot be given. In these circumstances, I have held therein that a departmental proceeding is ordinarily said to be initiated only when a chargesheet is issued. As per the judgment of the Apex Court in **Coal India Ltd., v. Saroj Kumar Mishra**, [AIR 2007 SC 1706], keeping in mind that charge memo dated 05.05.2007 was issued with an afterthought only after the promotion was given to him, a direction was given to consider his promotion to the post of Additional Commissioner (HR & CE), for the year 2016-17, as there was no legal impediment.

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15. In **Coal India Ltd., v. Saroj Kumar Mishra**, cited supra,



the Apex Court has held that the departmental proceedings is ordinarily said to be initiated only when a chargesheet is issued.

16. Admittedly, in the present case, 17(b) charges, dated 22.06.2017 was served on the petitioner only on 07.07.2017, by the time, the crucial date 01.04.2017 as shown intervened, the petitioner became fully eligible for promotional post of Additional Superintendent of Police. Again on 31.05.2017, when the respondents prepared temporary panel of the Deputy Superintendent of Police fit for promotion to the post of Additional Superintendent of Police, category - I again there was no charge memo issued. Therefore, on the date of preparing the temporary panel of Deputy Superintendent of Police fit for promotion, there was no charge memo and as such, it goes without saying that neither on the crucial date nor on the date of consideration, there was no charge memo or currency of punishment. Hence, the respondents, having found the petitioner is fit for promotion to the post of Additional Superintendent of Police on 31.05.2017 and again having issued the temporary promotion and posting order on 30.06.2017, cannot withhold the promotion order.

17. At this juncture, the learned Additional Government Pleader submitted that the 2nd charge levelled against the petitioner appears to be serious, therefore, he submitted that the promotional order cannot be acted upon. No one can agree with this proposition, for, by giving such promotion to the petitioner, the respondents cannot think that he has escaped from the department, therefore, the respondent without keeping quiet with the charges framed under Rule 17(b) of the Rules that has been served on the petitioner on 07.07.2017 as it is open to them to proceed against him in the manner known to law, they can proceed with the pending charge memo. Merely because, a person is promoted an employer is not in a helpless position.

18. With these observations, the writ petition stands allowed and the respondents are directed to relieve the petitioner from the post of Deputy Superintendent of Police, Inservice Training Centre, Ramanathapuram, within a period of two weeks from the date of receipt of a copy of this order and allow the petitioner to join in the promoted post as Additional Deputy Commissioner of Police, Prohibition Enforcement Wing, Tirunelveli City. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

<https://hcservices.accounts.gov.in/hcservices/>

The Director General of Police
Mylapore, Chennai



2.The Deputy Inspector General of Police
Madurai Range,
In-charge Ramanathapuram Range,
Ramanathapuram District

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3.The Commissioner of Police
O/o. The Commissioner of Police
Tirunelveli City
Tirunelveli District

+1cc to M/S.AJMAL ASSOCIATES,Advocate,SR. 76907

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