



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.9447 of 2017

and

WMP(MD)Nos.7180 and 7181 of 2017

R.Perumal

... Petitioner

vs.

1.The Government of Tamilnadu,
Rep by its Additional Chief Secretary to Government,
Home (Police.V) Department,
Secretariat,
Chennai-600 009.

2.The Director General of Police,
Tamil Nadu, Chennai-4.

3.The Commandant,
TSP 1st Battalion,
Trichy-12.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the first respondent in G.O.(D).No.570 Home (Police.V) Department dated 9.5.2017 and quash the same insofar as excluding the petitioner's name and issue a consequential direction to the respondents to promote the petitioner to the post of Personal Assistant (Administration) in Police Department with retrospective effect from the date on which his immediate junior was promoted and accord all consequential and monetary benefits including seniority within a reasonable time period to be fixed by this Court.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.D.Muruganantham

Additional Government Pleader

O R D E R

The petitioner is serving as Superintendent from 06.05.2009. He is due to be promoted to the post of Personal Assistant (Administration) and he is due to retire from service on 31.07.2017. He was found eligible for promotion to the post of



Personal Assistant(Administration), therefore, the Government have issued G.O(Ms)No.153, Home (Pol.V) Department, dated 27.02.2017, approving the temporary panel of Superintendents fit for appointment by recruitment by transfer as Personal Assistant (Administration) for the year 2016-17, by including his name in Serial No.17 after the name of Mr.A.Shanmugam and before the name of Mr.K.K.Anilkumar. In view thereof, the petitioner was hopefully expecting order of promotion in a short while. But, to his shock and surprise, promotions were ordered in G.O(D)No.570, Home (Police V) Department, dated 09.05.2017, granting promotion to 34 candidates from the post of Superintendant to the post of Personal Assistant(Administration) omitting the petitioner's name. On enquiry, he was informed that in contemplation of some charges, he has been denied promotion. However, within two days, on 11.05.2017, a charge memo has been issued to the petitioner.

2.The learned counsel for the petitioner would submit that perusal of the charge memo shows that there is no direct allegation of misappropriation against the petitioner, on the other hand, the first charge shows that the petitioner while serving as Superintendant had not shown his carefulness in dealing with the Bills, as a result, one Head Constable has misappropriated a portion of Government money to the tune of Rs.12,958/-, secondly, he has failed to supervise the work of dealing Junior Assistant in auditing of bills as per the guidelines issued in G.O.No.175, Finance (Salaries) Department, dated 18.06.2010, therefore, in all fairness, the respondents ought not to have prevented the petitioner from enjoying the fruits of promotion to the post of Personal Assistant (Administration) from the post of Superintendant on a flimsy ground. In any event, when the legal position is well settled, holding the field that if the incumbent is not facing any charge memo or currency of punishment on the date of consideration or on the cut-off date, his further promotion cannot be withheld, citing a reason that after the cut-off date or date of consideration, he has been issued with a charge memo. In support of his submission, he relied on the following decisions:-

- (i) Union of India and others vs. Anil Kumar Sarkar reported in (2013) 4 SCC 161.
- (ii) K.Karthikeyan vs. Indian Oil Corporation Limited reported in (2015) 1 MLJ 813.
- (iii) A.Kalaiselvan vs. State of Tamil Nadu reported in 2016 Writ L.R. 847.

3.Placing reliance on the above cited decisions, the learned counsel for the petitioner submitted that there can be no quarrel over the legal position laid down in the said decisions which clearly shows that the disciplinary proceedings commence only when a charge sheet is issued to the delinquent employee. Moreover, in the absence of any initiation of disciplinary proceedings by way



of any issuance of charge memo on the crucial date for panel, an employee cannot be denied promotion.

4. Concluding his arguments, he submitted that the petitioner is going to retire from service on 31.07.2017, therefore, when the respondents have already drawn and approved the temporary panel for promotion to the post of Personal Assistant (Administration) on 27.02.2017 vide G.O(Ms)No.153, including the petitioner's name, they ought to have included the petitioner's name in G.O(D)No.570, Home (Police V) Department, dated 09.05.2017, granting promotion to 34 candidates as Personal Assistant (Administration), therefore, he pleaded, a direction should be issued to the respondents to promote the petitioner on par with his juniors, by placing the petitioner in between Mr.A.Shanmugam and Mr.K.K.Anil Kumar, as there is no adverse remarks against the petitioner either on the crucial date or on the date of consideration or on the date of drawing the temporary panel of Superintendents fit for promotion to the post of Personal Assistant (Administration).

5. A detailed counter affidavit has been filed by the respondents. The learned Additional Government Pleader appearing for the respondents submitted that although the petitioner was not facing any disciplinary proceedings or currency of punishment on the date of drawing the temporary panel of Superintendents fit for appointment by recruitment by transfer as Personal Assistant (Administration) for the year 2016-17 namely, on 27.02.2017, subsequently, it was found that the petitioner has committed several lapses. While he was serving as Superintendant, he has miserably failed to supervise, verify and check the Pay Bills, Supplementary Bills, DA Arrears, Bonus, Terminal Leave Salary and Surrender Leave Salary Bills etc., intended to various police personnel of Nagapattinam District prepared by the dealing Junior Assistant. Secondly, he has again miserably failed to supervise the work of dealing Junior Assistant in auditing of bills as per the guidelines issued in G.O.No.175 Finance (Salaries) Department dated 18.06.2010. In that view of the matter, a charge memo in P.R.No.10/2017 has been issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, for the aforesaid charges on 11.05.2017, therefore, the petitioner's name was not shown in the promotion order issued in G.O(D)No.570, Home (Police V) Department, dated 09.05.2017. Since the petitioner is facing disciplinary proceedings on the basis of the charge memo issued on 11.05.2017, he cannot ask for promotion. Moreover, the petitioner has also questioned the correctness of the charge memo in another writ petition which is also pending for consideration. Hence, the prayer in the writ petition, he pleaded, is liable to be dismissed.

6. This Court is unable to find any merit in the said contention. The reason is, when the petitioner's name was



included in the temporary panel of Superintendents fit for appointment by recruitment by transfer as Personal Assistant (Administration) for the year 2016-17 and the same was approved by issuing G.O(Ms)No.153, Home (Pol.V) Department dated 27.02.2017, including the name of the petitioner also, the respondents ought to have included the petitioner in the promotion order issued in G.O(D)No.570, Home (Police V) Department, dated 09.05.2017, granting promotion to the post of Personal Assistant (Administration) to almost 34 candidates, including the petitioner's junior Mr.K.K.Anil Kumar who is found in Serial No.17 and others, for, only subsequent to the said promotion order, on 11.05.2017 a charge memo has been issued to the petitioner. Moreover, admittedly neither the charge memo was pending nor the currency of punishment was running against the petitioner either on the date of temporary panel issued in G.O(Ms)No.153 dated 27.02.2017, or on the date of promotional order issued in G.O(D) No.570 dated 09.05.2017. It is only after the issuance of promotion order dated 09.05.2017, removing the name of the petitioner, the alleged charge memo has been issued on 11.05.2017, which is against the settled legal principle laid down in the aforesaid decisions, holding that when there is no currency of punishment on the crucial date, the subsequent charge memo cannot be a bar for promotion.

7.The issue involved in this writ petition is no longer res integra. In this context, it is necessary to extract below paragraphs 16 and 17 of the Hon'ble Supreme Court judgment reported in (2013) 4 SCC 161 in the case of Union of India and others vs. Anil Kumar Sarkar:-

'16.It is not in dispute that an identical issue was considered by this Court in Union of India and Others vs. K.V.Jankiraman and Others, (1991) 4 SCC 109. The common questions involved in all those matters were:

'8. ... (1) What is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? (2) What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? and (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date?'

Among the three questions, we are concerned about question No.1. As per the rules applicable, the "sealed cover procedure" is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over.

17.Inasmuch as we are concerned about the first question, the dictum laid down by this Court relating to the said issue



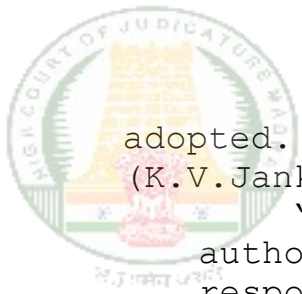
is as follows:- (K.V.Jankiraman case)

''16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant- authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy.''

In para 17, this Court further held: (K.V.Jankiraman case)

''17. ... 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...''

After finding so, in the light of the fact that no charge sheet was served on the respondent-employee when the DPC met to consider his promotion, yet the sealed cover procedure was



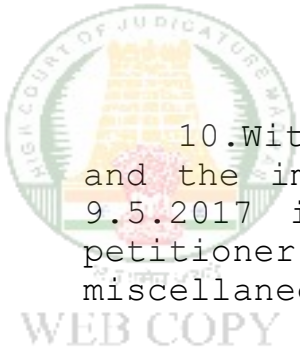
adopted. In such circumstances, this Court held that:
(K.V.Jankiraman case)

"32.The Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date of his immediate junior Shri M. Raja Rao was promoted pursuant to the order dated April 30, 1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits....We see no reason to interfere with this order. The appeal, therefore, stands dismissed."

(emphasis supplied)''

8.A perusal of the above ratio clearly shows that the claim of the petitioner is squarely covered by the said legal principle, for, the departmental proceedings is ordinarily said to be initiated only when a charge memo is issued, therefore, there cannot be any quarrel over the settled legal position that disciplinary proceedings will commence only when a charge sheet is issued to a delinquent employee. In the present case on hand, when G.O(D)No.570, Home (Police V) Department, dated 09.05.2017 was issued granting promotion to the post of Personal Assistant (Administration) to 34 candidates including the petitioner, no charge memo was issued to the petitioner, secondly, again, when G.O(Ms)No.153, Home (Pol.V) Department, dated 27.02.2017 was issued, no charge memo was issued, therefore, as per the ratio laid down by the Hon'ble Apex Court in Coal India Limited & Ors. V. Saroj Kumar Mishra reported in AIR 2007 SC Pg. 1706, the disciplinary proceedings will commence only when a charge sheet is issued, till then, the petitioner is qualified for promotion. This issue also has been considered by me in an order dated 20.04.2010 passed in W.P.No.9264 of 2004 (N.Ganesan vs. The Chairman-cum-Managing Director, Tamil Nadu Civil Supplies Corporation Ltd., Chennai) and again in another order dated 19.06.2017 in W.P(MD)No.340 of 2017 (R.Gnanasekar vs. State of Tamil Nadu and others).

9.This being the well settled legal position, as highlighted above, both on the date of drawal of the temporary panel issued in G.O(Ms)No.153 dated 27.02.2017 and on the date of issuance of promotion order issued in G.O(D)No.570 dated 09.05.2017, neither the charge memo was pending nor the currency of punishment was running against the petitioner, therefore, the respondents are directed to give promotion to the petitioner as Personal Assistant (Administration) forthwith, as he is going to retire from service with effect from 31.07.2017, with all consequential benefits on par with his juniors.



10. With the above direction, this Writ Petition stands allowed and the impugned G.O.(D).No.570 Home (Police.V) Department dated 9.5.2017 is set aside to the extent of non inclusion of the petitioner's name alone. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Additional Chief Secretary to Government,
Government of Tamilnadu,
Home (Police.V) Department,
Secretariat, Chennai-600 009.

2. The Director General of Police,
Tamil Nadu, Chennai-4.

3. The Commandant,
TSP 1st Battalion,
Trichy-12.

+1cc to M/S.N.Dilip Kumar, Advocate SR.No. 68169

+1cc to Special Government Pleader, SR.No. 68269

W.P(MD) No.9447 of 2017
27.07.2017

NBI

JM/SV MMS/SAR 4/29.08.2017/7P/6C