

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.12551 of 2012

R.Vadivelu

.. Petitioner

Versus

1.The Chief Conservator of Forest,
Panagal Building, Saidapet,
Chennai - 600 015.

2.The Conservator of Forest,
Salem Circle, Salem-7

3. The District Forest Officer,
Attur Division, Attur,
Salem District

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the respondents, especially the second respondent relating to his proceedings made in Na.Ka.No.1117/95/E2, dated 24.07.1995 as confirmed by the first respondent not on merits, but on the ground of delay pursuant to his proceedings made in Na.Ka.No.Aa Aa2/57805/2010, dated 19.11.2010 and communicated by way of the proceedings of the second respondent made in O.Mu.No.Pa.3/12969/2009 dated 13.01.2011 and quash the same as null and void, illegal and invalid and consequently directing the respondents, to issue paper promotion to the petitioner with effect from 01.04.1994 on par with his juniors and settle all monetary benefits inclusive of pension entitled to by the petitioner as per increased rate.

For Petitioner :: Mr.A.Amal Raj

For Respondents :: No appearance

ORDER

This Writ Petition is filed to call for the entire records of the respondents, especially the second respondent relating to his proceedings made in Na.Ka.No.1117/95/E2, dated

24.07.1995, as confirmed by the first respondent not on merits, but on the ground of delay pursuant to his proceedings made in Na.Ka.No.Aa Aa2/57805/2010, dated 19.11.2010 and communicated by way of the proceedings of the second respondent made in O.Mu.No.Pa.3/12969/2009 dated 13.01.2011, quash the same as null and void, illegal and invalid and consequently direct the respondents, to issue paper promotion to the petitioner with effect from 01.04.1994 on par with his juniors and settle all monetary benefits inclusive of pension entitled to by the petitioner as per increased rate.

2. Heard both sides.

3. The case of the petitioner is that he was working as a 'Forest Guard' under the third respondent, Attur Division, Attur, Salem District. He was due for promotion on 01.04.1994. Promotion was not granted to him. At that particular point of time, an enquiry had been initiated that on 26.10.1983, when he was on duty as 'Forest Guard' at Mithikuttai beat, goats entered in Vilampatti beat area. It was stated that the petitioner had not initiated any action and had not registered cases against the individuals who allowed their goats inside the Reserve Forest areas of Vilampatti beat. It is the claim of the petitioner that he was only in charge of Vilampatti beat, since there was no officer appointed for the said Vilampatti beat. It is stated that thereafter charge under Rules 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules were framed against him. The same was the only charge leading to imposition of minor punishment. On 31.08.1994, punishment was imposed by granting stoppage of increment for three years without cumulative effect. As against the said punishment, the petitioner filed an appeal and the punishment was reduced to one year stoppage of increment without cumulative effect. The impugned order was passed by the respondent stating that his representation seeking promotion had been rejected by proceedings dated 13.01.2011.

4. The learned counsel for the petitioner has also drawn the attention of this Court that a promotion list had been drawn on 01.03.1994. The name of the petitioner was omitted. However, the crucial date for promotion of the petitioner was on 01.04.1994. The petitioner was promoted just before he attained superannuation with effect from 01.01.1997.

5. In Govt. of A.P & Another Vs. M.Adbuta Rao, (2005) 12 SCC 258, the Honourable Supreme Court was concerned with the case of the Respondent who was denied promotion since an enquiry was pending. It was held as follows:

" 11. It is not in dispute that in 1994 when

the respondent's case was considered by the Department promotion Committee, the respondent was found fit to be promoted as Chief Engineer but promotion was deferred because of the pendency of the enquiry. The High Court has also noted that in the Departmental Promotion Committee convened on 04.11.1995 the respondent's promotion was deferred by the Departmental Promotion Committee although he had been found eligible to be promoted. In the background of these facts the High Court felt that there was no question of again considering the respondent's fitness for the purpose of promotion. The counsel for the appellants has submitted that subsequent Departmental Promotion Committees have found the respondent unfit for promotion. Presumably this was on the basis of the decision of the enquiry officer and the subsequent order of punishment passed by the Government. However, the reasons are not before us. Suffice it to say that the appellants have not questioned the recording of fact by the High Court in its order that the respondent had been found fit for promotion as a Chief Engineer twice by the Departmental Promotion Committee.

12. The respondent has retired from service in February 2001. Now, there is no question of the respondent being promoted. There is only a question of granting the respondent relief in monetary terms. Having regard to the facts of this case, we dispose of the appeal by directing the appellants to grant the respondent consequential benefits as if the respondent had been found fit for promotion by the Departmental Promotion Committee held on 07.10.1994. Such payment to be made within a period of four months from the date of communication of this order".

6. In this Writ Petition, the petitioner seeks promotion with effect from 01.04.1994, as the charge framed against the petitioner was only a minor charge and also related to a beat area over which he held additional charge. It is also seen that the respondents had rejected his demand also on the question of

delay. However, it is the respondents who should have the possession of the records of the petitioner. The petitioner seeks promotion with effect from 01.04.1994 on par with his Juniors and to settle all monetary benefits inclusive of pension entitled to by the petitioner as per increased rate and consequent reliefs.

7. In view of the fact that the Writ Petitioner had been charged only with a minor punishment, I hold that the same cannot be a bar to grant promotion. Consequently, this Writ Petition is allowed. No costs. The respondents are directed to give promotional and the resultant benefits to the petitioner, within a period of four weeks from the date of receipt of a copy of this order by granting him the promotion with effect from 01.04.1994 and the retrospective benefits should also be granted.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.The Chief Conservator of Forest,
Panagal Building, Saidapet,
Chennai - 600 015.

2.The Conservator of Forest,
Salem Circle, Salem-7

3. The District Forest Officer,
Attur Division, Attur,
Salem District

+1cc to M/s.A.Amalraj, Advocate SR.No.79010

+1cc to Special Government Pleader (F) SR.No.78892

W.P.No.12551 of 2012

MP (CO)
GMY (19/12/2018)