

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.5534 of 2017 and
W.M.P.No.5877 of 2017

S.Sivaraj Petitioner

-vs-

- 1.The Union of India
rep.by Government of Puducherry,
through the Chief Secretary to Government,
O/o.Chief Secretariat, Puducherry.
- 2.The Special Secretary to Government,
Revenue and Disaster Management,
O/o.Chief Secretariat, Puducherry.
- 3.The District Collector,
O/o. District Collector,
Department of Revenue and Disaster Management,
Revenue Complex, Saram, Puducherry.
- 4.The Commissioner,
Oulgaret Municipality,
Puducherry.
- 5.Soumya
- 6.A.Kumaran
- 7.Mathew Francis
- 8.C.Senthilkumar
- 9.V.Mahadevan
- 10.R.Arun Ayavu
- 11.R.Coumarane
- 12.S.Savondary
- 13.K.Djanamayjayam
- 14.S.Thirugnanasambandam
- 15.R.Sheela
- 16.P.Massilamani
- 17.K.P.Sreejith

18.The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Campus,
Chennai-600 104.

... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 23.11.2016 in O.A.No.994/2013 passed by the Hon'ble Tribunal and quash the same and consequently directing the respondents 1 to 3 to promote the petitioner to the post of Tahsildar with effect from 03.05.2013, the date on which when the respondents 5 to 17 were promoted and provide all other consequential monetary and non-monetary benefits.

For Petitioner :: Mr.V.R.Kamalanathan

For Respondents:: Mr.Syed Mustafa,
Spl.GP (Pondicherry) for
R1 to R4

No appearance for R6 to R12,
R16 and R17

ORDER

(Made by HULUVADI G.RAMESH, J.)

The petitioner was appointed as Lower Division Clerk in the year 2003 and subsequently got appointed as Deputy Tahsildar by direct recruitment in the office of the Deputy Collector (Excise), Puducherry by order dated 21.03.2006. While so, by order dated 03.05.2013, the third respondent promoted the respondents 5 to 17 to the post of Tahsildar on adhoc basis. The grievance of the petitioner is that even though he was placed in the 5th rank in the seniority list and most meritorious person than the respondents 5 to 17, he has not been promoted to the post of Tahsildar.

2.The petitioner filed an application before the 18th respondent-Tribunal to quash the order dated 03.05.2013 passed by the second respondent promoting the respondents 5 to 17, as illegal and for a direction to promote the petitioner to the post of Tahsildar with effect from 03.05.2013, the date on which the respondents 5 to 17 were promoted and to provide all the consequential monetary benefits to the petitioner. The said original application was dismissed by the Tribunal on the ground that the claim of the petitioner lacks merit and there is no illegality in the order promoting the said respondents, by order dated 23.11.2016. Challenging the said order, the petitioner is before this Court with this writ petition.

3. When this writ petition was taken up, the learned counsel for the petitioner has submitted that the juniors of the petitioner have been promoted to the post of Tahsildar on adhoc basis, even though the fact remains that the petitioner is at the fifth rank in the seniority list. He further submitted that the Tribunal has erred in not considering the fact that the confidential reports which were relied upon by the authorities and pertaining to the years 2006-2012 were put on notice to the petitioner only in the year 2012, which is against the law laid down by the Hon'ble Supreme Court in Dev Dutt vs. Union of India, reported in (2008) 8 SCC 725.

4. The learned Special Government Pleader appearing for the respondents 1 to 4 has submitted that the petitioner is all along very casual in discharging his duties and his performance during the years 2011 to 2014 was found to be very average.

5. Heard the learned counsel on either side and perused the materials available on record.

6. The stand taken by the petitioner before the Tribunal has been rejected on the ground that only if there are any mala fides or procedural irregularity, the assessment made by the DPC can be interfered with. It was also observed that it is not the case of the petitioner that the adverse entries have not been communicated to him. Further, it has been held that the representation against the adverse entries submitted by the petitioner was duly considered by the competent authority.

7. It appears that the petitioner was not even declared probation. The stand taken by the petitioner is that the confidential reports pertaining to the years 2006 to 2012 were brought to the knowledge of the petitioner only in 2012, whereas the reports pertaining to each year should have been brought to his knowledge in the same year itself or at least within a reasonable time.

8. Hence, the only question that needs to be considered is as to whether the petitioner would be entitled for deemed declaration of probation in the absence of any communication containing adverse remarks. Another question that arises to be considered is that once the petitioner is found to be satisfactory in discharging his duties, whether he is entitled for such relief from that point of time.

9. But it is seen that the petitioner has not challenged the confidential reports which was given to him in the year 2012, rather he challenged only the promotion order given to the other persons.

10. In the judgment of the Hon'ble Supreme Court in *Dev Dutt vs. Union of India*, reported in (2008) 8 SCC 725, which has been relied upon by the learned counsel for the petitioner, it has been held as follows:

"17. In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways: (1) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence, non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] that arbitrariness violates Article 14 of the Constitution."

11. On a reading of the above, it is clear that every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is poor, fair, average, good or very good entry and non-communication of the same would adversely affect the employee, since he would not have been aware of the assessment of his work and conduct by his superiors, and if it was brought to his knowledge, it would have enabled him to improve his work in future and further, he has been deprived of an opportunity of making a representation in this regard. Hence, the law laid down by the Hon'ble Supreme Court in this connection, is not in dispute.

12. But, in the present case, the petitioner challenges the impugned order dated 03.05.2013 promoting the respondents 5 to 17 to the post of Tahsildar on adhoc basis. The said promotions were challenged before the Central Administrative Tribunal and the Tribunal has dismissed the original application. On a perusal of the typed set of papers, it is seen that the Government has issued a proceedings dated 28.06.2012 to the petitioner herein, wherein it is stated that the subsequent representation submitted by the petitioner in response to the adverse entries in the confidential reports in respect of the petitioner, for the period from 2006-07 to 2010-11, has been submitted to the competent authority for due consideration and accordingly it has been communicated to the petitioner that 'the observations of the Reporting and Reviewing Authorities stand'. Without challenging the adverse remarks and the said

proceedings, the petitioner has filed the original application challenging the adhoc promotions given to the respondents 5 to 17, and hence the Tribunal has rightly dismissed the application.

13.Hence, while upholding the impugned order passed by the Tribunal, liberty is granted to the petitioner to either make a representation or to file original application before the competent forum, challenging the adverse remarks and thereafter pursue the remedy for promotion to the post of Tahsildar, in accordance with law.

14.The writ petition is disposed of accordingly. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Chief Secretary to Government,
Union of India,
O/o.Chief Secretariat,
Govt. of Puducherry, Puducherry.

2.The Special Secretary to Government,
Revenue and Disaster Management,
O/o.Chief Secretariat, Puducherry.

3.The District Collector,
O/o. District Collector,
Department of Revenue and Disaster Management,
Revenue Complex, Saram, Puducherry.

4.The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Campus,
Chennai 600 104.

+1cc to Mr.V.R.KAMALANATHAN, Advocate, S.R.No. 39068
+1cc to the Government Pleader, S.R.No.39277

W.P.No.5534 of 2017 and
W.M.P.No.5877 of 2017

SPG(CO)
TR(12/07/2018)