

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2018

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THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.22743 of 2009

M.Sundaram

.. Petitioner

versus

1. The Commissioner of Police,
Chennai City Police,
Egmore, Chennai-8.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the first respondent in connection with the impugned order passed by him in Na.Ka.No.Pa.Pi5(1)/356/59610/2009 dated 28.7.2009 and quash the same and direct the respondents to consider the claim of the petitioner for inclusion of his name in the 'C' list of Head Constables fit for promotion as Reserve Sub-Inspector of Police for the year 1999-2000 and promote him as Reserve Sub-Inspector of Police and grant him all consequential service monetary benefits.

For Petitioner : Mr.M.Ravi

For Respondents: Mr.T.M.Pappiah

Spl. Government Pleader

सत्यमेव जयते
ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Certiorarified Mandamus, to call for the records of the first respondent in connection with the impugned order passed by him in Na.Ka.No.Pa.Pi5(1)/356/59610/2009 dated 28.7.2009 and quash the same and direct the respondents to consider the claim of the petitioner for inclusion of his name in the 'C' list of Head Constables fit for promotion as Reserve Sub-Inspector of Police for the year 1999-2000 and promote him as Reserve Sub-Inspector of Police and grant him all

consequential service monetary benefits."

2. The petitioner was recruited as police constable in Chennai City on 27.02.1986 and was promoted as lance Naick on 04.08.1990 and was further promoted as Naick on 07.01.1993. He was further upgraded as Head Constable on 25.09.1996. According to the petitioner, he had received more than 50 rewards and have not come to adverse notice in his career.

3. According to the petitioner, he is fully qualified for participating in the range promotion board conducted in the year 1999-2000 in which a 'C' list was prepared for 41 vacancies in Chennai City Police for the purpose of promotion to the post of Reserve Sub-Inspector of Police. The petitioner was also subjected to selection process and was also called for interview, viva voce and drill test. According to him, he had answered all the questions in the interview. However, as per the 'C' list published, the petitioner's name was not included whereas number of juniors have been included and promoted as Sub Inspector of Police (AR). Subsequently, the petitioner participated in range promotion board conducted in the years 2003, 2004 and 2005, but he was not selected.

4. According to the petitioner, although there were more than 100 vacancies in the year 1999-2000 for some reason, the Department had filled up only 41 vacancies of which, the petitioner was denied promotion.

5. Be that as it may, subsequently 9 more persons had been included in the 'C' list for the year 1999-2000 on the basis of review conducted in respect of their selection over and above 41 vacancies which was originally notified dated 12.08.2000 and their names were included in the 'C' list and granted promotion as such on the basis of the orders passed by the Director General of Police as well as the Commissioner of Police, Chennai.

6. In view of the review conducted in respect of 9 persons who were also said to be juniors of the petitioner, the petitioner's selection ought to have also been reviewed along with 9 persons. However, the department failed to conduct review in respect of the petitioner alone. When a representation was made to that effect on 11.07.2009, seeking parity with other 9 persons, whose names were subsequently included in 'C' list, the same was rejected by proceedings dated 28.07.2009, on the ground that those persons were promoted because of the specific direction issued by the authorities concerned. Challenging the rejection order, the petitioner is before this Court.

7. Upon notice, T.M.Pappiah, the Special Government Pleader

entered appearance for the respondents and filed a counter affidavit and also additional counter affidavit.

8. In the counter, it is stated that the marks secured by the petitioner did not satisfy the cut off marks for inclusion in 'C' list for promotion of Sub Inspector (Armed Reserve). According to the counter affidavit, the cut off marks prescribed was 62.9 and the first 41 Head Constables were included in the 'C' list according to their seniority. The petitioner has secured 48.2 marks. As regards the contention of the petitioner that the additional 9 persons were included subsequently, in the counter affidavit, it is stated that those persons have secured less marks to the cut off marks however, on review, some marks were added as there were omission of marks towards rewards in respect of those persons and after inclusion of those marks, they reached the cut off marks of 62.9 and thereafter their names were included in the 'C' list for promotion to Sub Inspector of Police (Armed Reserve). In the said circumstances, the learned Special Government Pleader would submit that the petitioner cannot seek any relief from this Court in view of the factual position that he did not secure enough marks for inclusion in the 'C' list for the purpose of promotion as Sub Inspector of Police (Armed Reserve).

9. At this, the learned counsel for the petitioner would submit that the petitioner also suffered from omission of marks towards rewards at the hands of the department and this omission was identified and rectified by the department in respect of 9 persons who happened to be juniors to the petitioner. Such being the case, the department ought to have reviewed the case of the petitioner also, when representation was made by the petitioner. Failure on the part of the department in not reviewing the case of the petitioner is therefore unreasonable, arbitrary, unjust and violative of Article 14 of Constitution of India.

10. The learned counsel for the petitioner also relied on the decision of this Court rendered by a learned Single Judge in W.P.No.22981 of 2010 dated 25.11.2016, wherein the learned Judge in identical circumstances, has directed the department to reconsider the issue of the petitioner's case therein by conducting a review for the year 1999-2000. The operative portion of the order passed by the learned Judge in paragraphs 11 and 12 are reproduced below:

11. Considering all these aspects, this Court is of the considered view that the petitioner can also be brought in that square under which the petitioner's case also can very well be considered by way of review and ultimately, if the petitioner gets higher marks and if he reaches the cut

off marks of 62.9, certainly, the petitioner is also entitled to get promotion along with his junior who had already been promoted as Sub-Inspector of Police.

12. In the result, the Writ Petition is ordered directing the respondents to reconsider the issue of the petitioner's case to the promotion for the post of Sub-Inspector of Police by making a review of the test conducted in the year 1999-2000 wherein the petitioner participated and performed well. Ultimately, if the petitioner is awarded higher marks based on his performance, necessary consequential benefits of promotion as well as service benefits shall be conferred on him along with his juniors promoted and the entire exercise shall be done by the respondents within a period of 3 months from the date of receipt of a copy of this order. It is needless to say that while making review, the *modus operandi* adopted by the respondents in review cases of 9 persons and subsequent Government Orders issued thereon as referred to above, shall be taken into consideration. No order as to costs.

11. The learned counsel for the petitioner would submit that a similar direction may be issued to the Department and in case, the petitioner comes out successful in the review, he can be granted a similar relief as granted to the other 9 police personnel.

12. This Court, after consideration of the submissions made on behalf of the counsel, after perusal of the materials and pleadings placed on record is of the considered view that the submission made on behalf of the petitioner is well founded for simple reason that the similarly placed 9 persons whose cases were reviewed by the department and included them in 'C' list for the year 1999-2000 and thereafter, they were found to be eligible for promotion and therefore, their names were included in 'C' list and ultimately, promoted. It was also not in dispute that those 9 persons were juniors to the petitioner and it is also not in dispute that those 9 persons secured less marks to the cut off marks but however, in review, their marks were enhanced to the cutoff marks and therefore, finally they were promoted.

13. That being the case, as rightly contended by the learned counsel for the petitioner, the case of the petitioner cannot be

treated differently and cannot be denied at least the right of review, as directed by the learned Judge of this Court in the aforesaid writ petition No.22981 of 2010 dated 25.11.2016. The case of the petitioner is also required to be reviewed and in case, the petitioner secures enough marks as per the cut off marks prescribed, he can also be granted similar benefit as extended to other 9 police personnel.

14.In view of the above narrative and discussion, the impugned order in Na.Ka.No.Pa.Pi5/356/59610/2009 dated 28.07.2009 is set aside and the respondents are directed to review the selection of the petitioner for inclusion of his name in 'C' list in the year 1999-2000 for the purpose of promotion to the post of Sub-Inspector (AR) as done in the case of other 9 persons whose names were disclosed in the affidavit filed in support of the writ petition and in case, the petitioner secured the cut-off marks as prescribed, he would also be granted the same benefits as given to the said 9 persons. This exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

15.With the above direction, this Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Police,
Chennai City Police, सत्यमेव जयते
Egmore, Chennai-8.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.

+1cc to Mr.M.Ravi, Advocate, S.R.No.4796

+1cc to the Government Pleader, S.R.No.4816

W.P.No.22743 of 2009

KAN(CO)
RRK(30/01/2018)