

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.32202 of 2012

S.Alagar Samy

... Petitioner

Vs

- 1.The Union of India,
Rep. By its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
Central Reserve Police Force,
CGO Complex,
Lodhi Road,
New Delhi.
3. The Inspector General of Police,
Central Reserve Police Force,
Banjara Hills,
Hyderabad, Andhra Pradesh.
4. The Deputy Inspector General of Police,
Central Reserve Police Force,
Group Centre,
Avadi, Chennai-600 065.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to give effect to the order dated 29.08.2012 as the date of promotion of the petitioner as Sub Inspector with effect from the year 2007 and to pay all benefits.

For Petitioner : Mr.A.S.Mujibur Rahman
For Respondents : Mr.K.Gunasekaran, Spl. C.G.

O R D E R

Heard Mr.A.S.Mujibur Rahman, learned counsel for the petitioner and Mr.K.Gunasekaran, learned Special Counsel for Central Government appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a Writ of Mandamus, directing the respondents to give effect to the order dated 29.08.2012 as the date of promotion of the petitioner as Sub Inspector with effect from the year 2007 and to pay all benefits. "

3. The case of the petitioner is as follows:-

The petitioner was appointed as Constable on 15.04.1983 in the Central Reserve Police Force in Chennai. He has completed twelve months training successfully at Regional Training Centre-II, Avadi, Chennai and posted to 18 Battalion on July, 1984. Thereafter, the petitioner was posted to various places/Battalions. Finally, the petitioner was posted to G-77 Battalion, Poonamallee, from August, 2012 to till date.

4. The petitioner was promoted as Lance Nayak with effect from 11.01.1992 and was further promoted as Head Constable with effect from 25.09.1998. He became eligible for promotion to the post of Sub Inspector and came within the zone of consideration in the year 2007. As per standing order No.6/99, dated 19.03.1999, the various eligibility conditions have been prescribed for promotion to the post of Sub Inspector which are enumerated hereunder:

a) Must have completed minimum five year service in the rank subject to a total service of 18 years.

b) Must have qualified in W & T course. However Hcs who have qualified in Senior Cadre course, are not required to undergo W & T course.

c) Must qualified in Senior under officers cadre course (SUOCC)

d) Must not have adverse report in the ACR in the preceding five years.

e) Must not have had major punishment in preceding five years.

5. The one of mandatory qualifications prescribed was that the Head Constable had to undergo W & T Course for consideration for promotion to the post of Sub Inspector. In the instant case, the petitioner was not sent to the W & T (Programme) Course since he had completed 47 years of age. According to the relevant instructions, at that time, the Head Constables who have not completed 47 years of age, would be sent for W & T (Programme). Since the petitioner could not complete W & T (Programme) because of his over age, he became ineligible for

consideration as Sub Inspector. However, many of his junior colleagues were sent for the said course and then promoted. According to the petitioner, he was qualified for promotion as Sub Inspector in all other respects.

6. In the above circumstances, the petitioner made a representation on 28.07.2007, requesting to permit him to attend W & T (Programme) considering his long years of service and seniority. However, he was informed by the competent authority that he was above 47 years of age and therefore, not eligible for W & T (Programme). In the mean while, it appears that by subsequent instructions dated 15.09.2010, the existing W & T (PP) Course and Senior Under Officers Cadre Course (SUOCC) have been amalgamated under common syllabus and the same was put into effect from April, 2011. According to the latest instructions, there was no age restrictions.

7. In the above circumstances, the petitioner was allowed to undergo the amalgamated course from October, 2011 to February, 2012 and on being successful, he was promoted as Sub Inspector with effect from 29.08.2012.

8. The grievance of the petitioner is that on he being qualified in the amalgamated course, he ought to have been promoted from the year 2007, the year in which his juniors were promoted. Though he is ready and willing to go for W & T (Programme), the same was not permitted by the respondents, citing his age as a reason. Since his grievance has not been remedied, he is before this Court.

9. Upon notice, Mr. K. Gunasekaran, the learned Special Standing Counsel for Central Government entered appearance for respondents and filed a counter affidavit.

10. In the counter affidavit, the fact that the W & T (Programme) and Senior under officers cadre course (SUOCC) are amalgamated and the fact that the petitioner had successfully completed the course in 2012 had also been admitted. Needless to mention that in view of completing the course successfully, the petitioner came to be promoted in 2012 as Sub Inspector. In the counter affidavit, it does not come up with any other averments stating that the petitioner was otherwise not qualified except the reason that he has not completed the W & T (Programme) course in 2007.

11. Having considered the factors as narrated above, it is an admitted fact that the petitioner had become qualified for promotion to the post of Sub Inspector in 2012. The W & T (Programme) Course which was in existence at that time when the

promotion due to the petitioner in 2007 could not be availed by the petitioner not for any reason attributable to him but for the reason that the petitioner was 48 years of age at that time. At that relevant time, the instructions provided the age limit of 47 years to be sent for W & T (Programme). Therefore, it is not the fault of the petitioner that he was denied the course facility and therefore, he is entitled for promotion to the post of Sub Inspector in 2007 along with his junior colleagues.

12. Further it has to be seen that after coming into force the subsequent instructions dated 15.09.2010, the Course of W & T (PP) and SOUCC have been amalgamated and that a common syllabus drawn up and the petitioner was allowed to participate and has come out successful and thereafter, he was promoted as Sub Inspector by order dated 29.08.2012. That being the case, as rightly contended by the learned counsel for the petitioner, the petitioner ought to have been granted promotion with effect from the date of his juniors were promoted in 2007 as it was not fault of the petitioner not to have undergone the W & T (PP) Course in 2007. Once the petitioner was found to be eligible in 2011-12 for the same W & T (PP) Course and was allowed to participate and he has come out successful and earned his promotion, the promotion ought to have been given from the date when the petitioner's juniors were promoted in 2007, otherwise, it will be an act of punishment inflicted on the petitioner as he would lose his valuable seniority in the post of Sub Inspector. In the said circumstances, this Court does not see any justification for denying the benefit of the promotion to the petitioner with effect from 2007 as his juniors were found fit and promoted. Moreover, as regards his qualification and eligibility are concerned, the respondents have not disputed about the same except that the petitioner did not undergo W & T (Programme) course in 2007 as he was barred from undergoing the Course on the said date. In the said circumstances, the non-promotion of the petitioner with effect from the date his juniors cannot be countenanced either in law or on facts. In these circumstances, the petitioner has made out a clear case for grant of the relief.

13. For the above said reasons, the writ petition is allowed and there shall be a direction to the respondents to grant promotion to the petitioner to the post of Sub Inspector with effect from the date his juniors were promoted in 2007 and further grant him all attendant benefits including seniority, pay fixation, etc., in the post of Sub Inspector. The respondents/competent authorities are directed to pass orders giving effect to the above direction, within a period of eight weeks from the date of receipt of a copy of this order. It is

made clear that on fixation of pay, the petitioner is entitled only notional benefits and not actual arrears on such re-fixation. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
Central Reserve Police Force,
CGO Complex, Lodhi Road, New Delhi.
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Central Reserve Police Force,
Banjara Hills, Hyderabad, Andhra Pradesh.
4. The Deputy Inspector General of Police,
Central Reserve Police Force,
Group Centre,
Avadi, Chennai-600 065.

+1cc to Mr.K.Gunasekaran, Advocate, S.R.No.26140

+1cc to Mr.A.S.Mujibur Rahman, Advocate, S.R.No.26244

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PPA(CO)
CS/07/06/18

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