

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved : on 29.04.2019

Order Delivered : on 29.08.2019

Coram:-

The Honourable Mr. Justice T.Raja

Writ Petition No.16771 of 2009

and

M.P.No.2 of 2009

Md.Abbas Mohidden

... Petitioner

vs.

1.Government of India,
Rep. By the Secretary to Government,
Ministry of Defence,
New Delhi.

2.The Director General of Coast Guard,
Coast Guard Headquarters,
National Stadium Complex,
New Delhi.

3.The Commanding Officer,
Coast Guard Station,
Fort St. George,
Chennai - 9.

4.Mr.S.K.Mishra,
Commandant.

5.Mr.Waila,
Commandant.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to the order passed by the second respondent in No.OF/1185, dated 21.07.2009 and its consequential order No.AD/100, dated 27.07.2019 passed by the third respondent and quash the same and consequently direct the second respondent to promote the petitioner as Deputy Commandant w.e.f. December, 1995, and as Commandant (Selection Grade) w.e.f. August, 2002, along with XII Batch and pay all consequential and other benefits arising there from and pass such further orders.

For Petitioner : Mr.K.S.Gnanasambandan
for Ms.N.Fidelia

For R1 to R3 : Ms.Sunita Kumari, CGSC
For R4 & R5 : No Appearance

ORDER

By way of filing this writ petition, the petitioner seeks to quash the impugned proceedings dated 21.07.2009 passed by the second respondent/the Director General of Coast Guard, New Delhi, promoting him as Deputy Commandant with effect from December, 1996, along with XIV batch, instead of promoting him from December, 1995, with XII batch, and its consequential order passed by the third respondent/the Commanding Officer, Coast Guard Station, Chennai, dated 27.07.2019, denying to promote him to the post of Commandant (Selection Grade) holding him as 'Not Fit'.

2. Mr.K.S.Gnanasambandan, learned counsel for the petitioner submitted that the petitioner joined the services of the Coast Guard as an Assistant Commandant (Technical), which is class I Group A Cadre, on 06.08.1989, in the XII Batch, and after completion of training and probation, he was posted in several ships in the Western Command. He was also posted at the Eastern Command on Board and during the course of his employment, he raised certain objections about the conduct of his superior officers regarding looting of some Thai Trawlers using the crew of the Jija Bai Ship, as that would amount to piracy and that became the root cause for victimization of the petitioner. In view of his objection, he was not considered for the next avenue of promotion to the post of Deputy Commandant and his promotion alone was kept in the sealed cover in December, 1995. Thereafter, he gave his representation dated 30.12.1995 to the respondents against the non-inclusion of his name in the panel. However, instead of passing orders on his request, the respondents had issued a charge sheet on 15.02.1996 and thereafter, disciplinary proceedings were also issued against him.

3. Aggrieved against the action taken by the respondents, the petitioner filed O.J.C.No.6959 of 1997 before the Hon'ble Orissa High Court and the same was disposed of on 19.07.1999 directing the second respondent to open the sealed cover containing his promotion to the post of Deputy Commandant. However, the said direction was not complied with and therefore, he preferred Contempt Petition No.110 of 2000, whereby, the Hon'ble Orissa High Court, vide order dated 19.06.2001, gave another 8 weeks time as a last chance and observed that if the

said direction is not complied within such time, then the matter will be seriously viewed. Thereafter, the respondents, without complying the said direction, dismissed the petitioner from service on 31.10.2003.

4. Aggrieved against the order of dismissal dated 31.10.2003, the petitioner filed W.P.No.36674 of 2003 and this Court, by order dated 05.03.2008, set aside the order of dismissal dated 31.10.2003, with a direction to restore the petitioner into his services with all consequential benefits. As against that, when W.A.No.487 of 2008 was filed, the Hon'ble Division Bench of this Court, vide order dated 10.02.2009, dismissing the appeal filed by the department, directed them to reinstate the petitioner into his services with all consequential benefits as if there was never any order of dismissal against him within eight weeks. Again, unsuccessfully, they filed SLP No.8622 of 2009 and the Hon'ble Apex Court, vide order dated 20.04.2009, dismissed the same confirming the order passed by the learned Division Bench of this Court as well as the learned Single Judge of this Court. Only after the order passed by the Hon'ble Apex Court, the petitioner was reinstated in services on 22.04.2009 and he was forced to join as Assistant Commandant without being promoted as Commandant (Selection Grade) along with XII batch mates. Finally, after a period of three months, the second respondent, vide proceedings dated 21.07.2009, which is impugned herein, promoted him as Deputy Commandant with effect from December, 1996, along with XIV batch mates, instead of promoting him with effect from December, 1995 (XII Batch), though he belongs to XII batch. Subsequently, the third respondent, vide another impugned proceedings dated 27.07.2019, denied him promotion to the post of Commandant (Selection Grade) stating that he is not fit to be promoted.

5. Emphatically arguing that the impugned proceedings passed by the respondents 2 and 3 are illegal and arbitrary, Mr.Gnanasambandan contended that when the petitioner was fully eligible to be promoted to the post of Commandant (Selection Grade) and not as Commandant (Junior Grade) as mentioned by the third respondent vide order dated 27.07.2019, in view of his meritorious and excellent remarks obtained by him from his senior officers of every ship that he had worked in, the respondents ought not to have denied him promotion to the post of commandant (Selection Grade). Therefore, the petitioner made representations dated 14.07.2009 and 27.07.2009 regarding Sealed Cover procedures and promotion as Deputy Commandant with effect from December, 1995, and Commandant (Selection Grade) with effect from August, 2002, to the second respondent through the third respondent, but, the third respondent and the Eastern Regional Commander, Coast Guard, instead of forwarding the same

to the second respondent, stated that the orders passed by the High Court are meant only for the dustbins of the Coast Guard and by saying so, they have rejected his representation without forwarding the same to the second respondent.

6. Drawing notice of this Court to a representation dated 16.07.2009 submitted by the petitioner, learned counsel for the petitioner contended that the DPC for promotion from Assistant Commandant to Deputy Commandant was held in October, 1995, and therefore, the charge sheet issued to him in February, 1996, cannot preclude the petitioner from getting promotion. Although he brought to the said issue to the higher authorities, he did not get any response from them. Finally, he filed a case before the Hon'ble Orissa High Court in O.J.C.No.6959 of 1997 and the same was disposed of on 04.07.1999 with a direction to open the sealed cover immediately. But, the Coast Guard Authorities have decided not to implement the same. Finally, he was dismissed from service on 31.10.1993 and thereafter, as stated above, the matter went up to the Hon'ble Apex Court, whereby, the Hon'ble Apex Court had also confirmed the order passed by this Court quashing the order of dismissal dated 31.10.1993. Subsequently, he was reinstated in service on 22.04.2009. Therefore, when DPC was held in October, 1995, for promotion from Assistant Commandant to Deputy Commandant, he was denied promotion citing the pendency of charge sheet issued to him in February, 1996. However, pursuant to the charge sheet, when he was dismissed from service, the order of dismissal dated 29.10.2003 was set aside by this Court on 05.03.2008 and only when the said order became final before the Hon'ble Apex Court, he was reinstated in service on 22.04.2009. Therefore, it is contented, the respondent ought to have promoted him as Deputy Commandant with effect from 06.12.1995 and Commandant (Selection Grade) with effect from 01.08.2002 along with consequential benefits thereon. With these submissions, he prayed for allowing the writ petition as prayed for.

7. Per contra, Ms.Sunita Kumar, learned Central Government Standing Counsel appearing for the respondents 1 to 3, by filing a detailed counter affidavit, submitted that the petitioner was dismissed from service on 31.10.2003 and as against that, the matter went upto the Hon'ble Apex Court, whereby, vide order dated 20.04.2009, the Hon'ble Apex Court confirmed the order passed by the learned Division Bench of this Court quashing the order of dismissal dated 31.10.2003 passed against the petitioner and therefore, until the order of the Hon'ble Apex Court, his name was not included for promotion. However, he was reinstated in service on 22.04.2009 with all the consequential benefits like pay and other allowances including back dated promotion to the rank of Deputy Commandant with effect from 27.12.1996. After his reinstatement, he was sent

for completion of formality in Medical Board at Military Hospital, Chennai, as he was out of service for more than 5 ½ years . Only after the approval of the Medical Board, a Coast Guard Promotion Board was constituted to consider his service records prior to the imposition of dismissal from service awarded by the Coast Guard Court on 29.10.2003. The said Board assembled on 20.07.2009 and opened the sealed covers containing the recommendations of the earlier Coast Guard Promotion Boards held from 1995 to 2003 in respect of the petitioner and finally, he was not recommended for promotion to the rank of Deputy Commandant by the Promotion Board held in 1995 as he was found 'Not Fit'. Subsequently, during the year 1996, he was found fit by the Promotion Board to the rank of Deputy Commandant and thereby, he was also given back dated promotion with effect from 27.12.1996 along with all the consequential monetary benefits. The officers, who were promoted to the rank of Deputy Commandant on 27.12.1996, had been considered for promotion to the next rank of Commandant (Junior Grade) by the Promotion Board held in 2002 with effect from 18.09.2002. The said Promotion Board had also considered the eligibility of the petitioner to the said higher rank of Commandant (Junior Grade) based on his Confidential Reports which were rendered by his Commanding Officers based on his performance from different periods ranging from 1997 to 2003. Since his performance was not satisfactory as reflected in the Confidential Reports, he was not recommended for promotion to the next rank of Commandant (Junior Grade). In the meanwhile, the petitioner was dismissed from service on 29.10.2003 and reinstated only on 22.04.2009 in compliance of the order passed by the Hon'ble Apex Court as stated above, and during this period, no confidential report was initiated after March, 2003 and therefore, the Board had recommended that based on the performance of the petitioner for the year 2009-2010, which is subsequent to his reinstatement, the request of the petitioner seeking promotion to the rank of Commandant (Junior Grade) may be considered afresh.

8. Continuing further, learned counsel for the respondents 1 to 3 submitted that the allegation of the petitioner that he was put to victimization and vengeance is false, inasmuch as when the petitioner was serving as Engineer Officer of the Coast Guard Ship Jijabai, during his tenure, a Board of inquiry was convened by the Coast Guard Regional Commander (East) to investigate occurrence of various technical defects on board of the said ship. The analysis of the said Board of inquiry proceedings revealed certain lapses on the part of the petitioner as Engineer Officer of the said Coast Guard Ship. Therefore, the Competent Authority directed initiation of disciplinary proceedings against the petitioner which ultimately lead to trial by a Coast Guard Court. As a matter of fact, as per Rule 7(2) of the Coast Guard (Seniority and Promotion)

Rules, 1987, the promotion to the rank of Deputy Commandant is on the basis of seniority, subject to fitness, and therefore, it is not a time scale promotion as claimed by the petitioner. When the petitioner was assessed in 1995 for promotion to the rank of Deputy Commandant in accordance with the aforesaid provisions, the disciplinary proceeding initiated against him was being progressed. Therefore, the recommendations of the Promotion Board relating to his promotion from 1995 onwards were kept in a sealed cover as per the instruction of the Government for such cases and thereafter, since the disciplinary proceeding against the petitioner was concluded only in October, 2003, he was not rightly considered for promotion, she pleaded.

9. Emphatically arguing further, learned standing counsel for the respondents 1 to 3 submitted that since the petitioner was not found fit for promotion to the rank of Deputy Commandant in the year 1995 with his batch of officers by the Promotion Board held in 1995, his promotion to the rank of Commandant in 2002 and 2003 does not arise. Moreover, he was not found fit for back dated promotion to the rank of Commandant (Junior Grade) with effect from 18.09.2002, for, the Promotion Board, taking note of the fact that no confidential report was rendered on the petitioner's performance after March, 2003, till his reinstatement in service on 22.04.2009, inasmuch as he was dismissed from service on 29.10.2003, recommended for promotion to the rank of Commandant (Junior Grade) by the future Promotion Board held in 2010 based on the Confidential Reports for the period 2009-2010 to be rendered by his Commanding Officers. This fact was also rightly communicated to the petitioner on 21.07.2009, hence, it is contended, the prayer of the petitioner seeking back dated promotion along with consequential monetary benefits cannot be entertained by this Court.

10. This Court is unable to find any merit on the above said submissions. Admittedly, it is not in dispute that the petitioner was issued with a charge sheet dated 30.07.1996 and for the very same charges, he was again reissued with another charge sheet on 10.08.1999 with just changing the date and it is only a cyclostyled one of the earlier charge sheet. The Hon'ble Division Bench of this Court, looking at the controversy that though the complaint was lodged on 19.04.1995, it was stated in the first charge that petitioner was negligent during April and May, 1995, in ensuring maintenance and timely defect rectification of the ship's machinery and taking note of the fact that as the complaint was lodged in April itself, how the department can frame charge alleging certain lapse committed during future May, 1995 also, the Hon'ble Division Bench observed as follows:-

"18. At this juncture, it is also relevant to point out that though the

complaint was lodged on 19.04.1995, in the first charge, it has been mentioned that the respondent/Officer was negligent during April and May, 1995 in ensuring maintenance and timely defect rectification of the ship's machinery, which adversely affected the ship's operational availability. Charges must be specific. Here, in the complaint of 19.04.1995 itself, how can there be complaint regarding the future period of May also? Though the first charge-sheet was issued on 30.07.1996 since it has been issued only based on the complaint dated 19.04.1995, there cannot be accusation for the future period also. Therefore, it must be concluded that there is ambiguity in the very frame of the charges also and no specific details, as to in what way the defects occurred and how the charged official is responsible for the same etc. have been mentioned. Thus, it must be concluded that the very base of the charges is very vague, as has been rightly claimed on the part of the respondent."

From the reading of the observation of the Hon'ble Division Bench, it is clear that that the petitioner was victimized as there was an ambiguity in the very framing of the charges, for, in the first charge, it was mentioned that the petitioner was negligent during April and May, 1995, when the complaint itself was dated as 19.04.1995. By observing so, the Hon'ble Division Bench of this Court, vide order dated 10.02.2009, confirmed the order passed by the learned Single Judge, with a specific direction to the respondents to reinstate the petitioner into service with all consequential benefits as if there was never any order of dismissal against him, within eight weeks. For better appreciation, relevant portion of the said observation made by the Hon'ble Division Bench is also extracted below:-

"In the result, this writ appeal is dismissed. The appellants are directed to reinstate the respondent into service with all consequential benefits, as if there was never any order of dismissal against him, within eight weeks from today....."

From the above, it is clear that the department was directed to reinstate the petitioner into the services as if he was not even dismissed from service, hence, he should have been promoted on par with his juniors belonging to the XII batch mates. Therefore, the stand of the respondents that since he was dismissed from service on 31.10.1993, no confidential report was initiated after March, 2003, on his performance and hence, he could not be considered for promotion when his XII batch mates

were considered for promotion is against the direction of the Hon'ble Division Bench of this Court, that was confirmed by the Hon'ble Apex Court.

11. Consequent to the order passed by the Hon'ble Division Bench, when the department went an appeal, the Hon'ble Apex Court also dismissed the same on 20.04.2009 passed in SLP.No.8622 of 2009. Subsequently, the petitioner was reinstated in services with effect from 22.04.2009 in the post of Assistant Commandant without promotion him as Commandant (Senior Grade) along with his XII batch mates.

12. Secondly, it is also an admitted fact that when the petitioner joined the services of the Coast Guard as an Assistant Commandant (Technical) on 06.08.1989 in the XII Batch, after his training and probation, he was posted to work in several ships of the Western Command. Thereafter, while he was working in Eastern Commandant, during his duty in Jija Bai Ship, he raised certain objections with regard to conduct of the Superior Officers, particularly, against the fifth respondent herein, about looting some Thai Trawlers using the crew of the Jija Bai Ship, as the looting would amount to piracy. The fifth respondent, having perturbed by the complaint given by the petitioner, deliberately omitted the petitioner's name for the next avenue of promotion to the rank of Deputy Commandant held on 05.08.1995. Thereafter, the Departmental Promotion Committee was convened on 31.10.1995 to consider the issue of promotion to the post of Deputy Commandant, but, in the list, his name was omitted and his promotion alone was kept in the sealed cover in December, 1995. Aggrieved by non-inclusion of his name, he preferred a representation dated 30.12.1995 to the respondents, but, without taking any action on the said representation, the respondents had issued a charge sheet on 15.02.1996.

13. Finding no response on his claim for promotion to the post of Deputy Commandant, the petitioner filed O.J.C.No.6959 of 1997, whereby, the Hon'ble Orissa High Court, vide order dated 19.07.1999, while disposing the said case, directed the second respondent to open the sealed cover containing his promotion to the post of Deputy Commandant. In this context, it is appropriate to extract the relevant portion of the order passed by the Hon'ble Orissa High Court.

"With reference to Annexures 9 and 10 to the Misc. Case it is submitted by the learned counsel for the petitioner that Coast Guard Court in respect of the petitioner has been dissolved by the Convening Authority. Learned counsel for the Central Government states that in respect of the Coast Guard

Court, he has not been able to get necessary instructions.

In that view of the matter, we direct that in case Coast Guard Court has been dissolved, it is submitted by the learned counsel for the petitioner that necessary follow up action including opening of the sealed cover shall be taken immediately.

A copy of this order be given to the learned counsel for the Central Government."

Admittedly, the respondents have not complied with the above said direction and therefore, the petitioner was constrained to file Contempt Petition No.110 of 2000 and the Hon'ble Orissa High Court, vide order dated 19.06.2001, was pleased to pass the following order:

"It is most unfortunate that the order dated 19.07.1999 passed by this Court in O.J.C.No.6959 of 1997 has not been complied with by the opposite parties for long time. However, as a last chance we grant eight weeks time to the opposite parties to comply with the aforesaid order of this Court, if not already complied with, failing which, it will be seriously viewed.

If the petitioner feels aggrieved by the order if any passed or is going to be passed, it is open to him to challenge the same in an appropriate proceedings. With these observations, the contempt petition is closed and disposed of."

Despite the above said direction, again in 2002, the respondents have placed his name in the sealed cover as the disciplinary proceedings initiated against him were still pending then.

14. In the aforesaid peculiar facts and circumstances of the case, it is more appropriate to look into the two crucial aspects; one, the fifth respondent, having been perturbed by the action exposed by the petitioner, deliberately with bad intention, refused to include his name for promotion to the post of Deputy Commandant and kept his promotion alone in the sealed cover in December 1995; secondly when the charge sheet dated 15.02.1996 was issued against the petitioner, the respondents have taken a stand that as the disciplinary action against him was being progressed, the recommendations of the Promotion Boards relating to his promotion from 1995 onwards were kept in sealed cover following the instruction of the Government for such cases. This fact was admitted by the respondents in paragraph No.6 of the counter affidavit and the same is extracted below:-

"The petitioner in 1995 was

assessed for promotion to the rank of Deputy Commandant in accordance with the aforesaid provisions. Since the disciplinary action against him was being progressed the recommendations of the Promotion Boards relating to his promotion from 1995 onwards were kept in sealed cover following the Government instructions for such cases."

15. While dealing with this issue, learned Single Judge of this Court, vide order dated 05.03.2008 passed in W.P.No.36674 of 2003, has clearly held that charge sheet dated 15.02.1996 initiated against the petitioner, due to which his name was kept in sealed cover, came to be dropped and one Mr.S.K.Singh, who was the Commanding Officer, forwarded the Record of Evidence to the Coast Guard Headquarters recommending to drop the charges. For better appreciation, relevant portion of the said order is extracted below:-

"8. On 15.02.1996, Record of Evidence (ROE for short) was started and it was completed during the end of February, 1996.

.....
.....

Mr.S.K.Singh, the sixth respondent was the Commanding Officer, who forwarded the ROE to the Coast Guard Headquarters and it is the stand of the petitioner that he had held that there was no case against the petitioner and recommended dropping the charges."

As the charge sheet dated 15.02.1996 and the consequential disciplinary proceedings initiated against the petitioner were dropped, it goes without saying that the petitioner was entitled for the next avenue of promotion, that was due on 05.08.1995 as Deputy Commandant along with his XII Batch mates. This aspect was not answered by the respondents either in their counter affidavit or in their rejoinder affidavit filed to the reply affidavit of the petitioner.

16. As highlighted above, it must be reiterated again that by virtue of the order passed by the Hon'ble Division Bench of this Court directing the respondents to reinstate the petitioner as if there was never any order of dismissal against the petitioner, in my considered view, the petitioner is deemed to be in service during the period of dismissal from service as well, and subsequently, when SLP was preferred, the Hon'ble Apex Court also confirmed the order passed by the Hon'ble Division Bench. Thus, the stand of the respondents that since no Confidential Report was initiated on the performance of the petitioner during the period of his dismissal from service, he could not be considered for promotion along with his XII batch

mates, cannot be sustained in the eye of law, as he is deemed to be in service in view of specific direction of the Hon'ble Division Bench of this Court stated supra.

17. In fine, for the reasons stated above, the impugned proceedings of the respondents 2 and 3 are set aside and the writ petition is allowed. Consequently, the respondents are directed to promote the petitioner as Deputy Commandant with effect from December, 1995, and as Commandant (Selection Grade) with effect from August, 2002, along with the XII batch. They are further directed to complete the entire exercise, including the payment of consequential monetary benefits, within a period of eight weeks from the date of receipt of a copy of this order. M.P.No.2 of 2009 is closed. No Costs.

Sd/-

Assistant Registrar (Insp.cell)

//True Copy//

Sub Assistant Registrar

rkm

To

- 1.The Secretary to Government,
Ministry of Defence,
New Delhi.
- 2.The Director General of Coast Guard,
Coast Guard Headquarters,
National Stadium Complex,
New Delhi.
- 3.The Commanding Officer,
Coast Guard Station,
Fort St. George,
Chennai - 9.

+1cc to Ms.Sunita Kumari Advocate, S.R.No. 74362
+1cc to Ms.N.Fidelia Advocate, S.R.No.74323

CP(CO)
CB(20/09/2019)

WP No.16771 of 2009