

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.29028 of 2008 and M.P. No.2 of 2008

K.Chettiappan

.. Petitioner

-vs-

1.State of Tamil Nadu,
rep. by its Secretary to Government,
Home (Police) Department,
Secretariat, Chennai-9.

2.Director of Fire and Rescue Services,
Chennai-600 008.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the first respondent in G.O. Ms. No.1541, Home (Police XVII) Department, dated 13.11.2008 and quash the same in so far as non-inclusion of the name of the petitioner in the panel of the year 2007-08 for promotion to the post of Divisional Officer and direct the respondents to promote the petitioner as Divisional Officer from the date on which his junior came to be promoted with all the consequential benefits.

For Petitioner : Mr.P.Ganesan

For Respondents: Mr.K.Ravikumar,
Additional Government Pleader

ORDER

The writ petition has been filed challenging the impugned G.O. Ms. No.1541, Home (Police XVII) Department, dated 13.11.2008 passed by the first respondent in and by which the first respondent has held that since the petitioner was under going currency of punishment, accepting the recommendations of the Departmental Promotion Committee for non-inclusion of his name in the regular panel of Assistant Divisional Officer's fit for promotion and appointment as Divisional Officer by recruitment/by transfer for the year 2007-08, his request for promotion to the post of Divisional Officer was refused.

2.Learned counsel appearing for the petitioner would submit that the petitioner joined as Station Officer on 18.03.1980 in the Fire and Rescue Service Department through Tamil Nadu Public Service Commission and thereafter, he was promoted as Assistant Divisional Officer on 24.02.1997 and the next avenue of promotion is to the post of Divisional Officer, for which, he was fully qualified for being promoted as Fire Officer in the year 2007-08 itself. When the Government published panel for promotion to the post of Divisional Officer for the year 2007-08, the petitioner's name was not included in the panel, but included in the dropped list on the ground that the Departmental Promotion Committee did not recommend the name of the petitioner though the respondents recommended his name. According to the learned counsel appearing for the petitioner, the petitioner suffered four disciplinary proceedings. However, the first disciplinary proceedings resulted in the punishment of stoppage of increment for six months and the said punishment was imposed on 12.09.2003 that too for the occurrence of the year 1998 and the petitioner underwent the punishment. With reference to the second disciplinary proceedings, another punishment of stoppage of increment for one year was imposed on 12.09.2003 for the occurrence of the year 2001. However, the third disciplinary proceedings ended with punishment of stoppage of increment for two years on 11.08.2004. and as against the same, the petitioner preferred an Appeal and the same was reduced to one year by order dated 10.10.2005 and the fourth disciplinary proceedings ended with punishment of stoppage of increment for one year with cumulative effect on 23.02.2006 and on Appeal, it was modified into without cumulative effect by order dated 15.11.2006.

3.Learned counsel appearing for the petitioner would further submit that since all the above four punishments had come to an end, the impugned order in so far as non inclusion of the name of the petitioner is liable to be quashed for the following reasons:

The provision of Schedule-XI, Part-A of Service Rules of Tamil Nadu Government Servants (conditions of service) Act 2016 deals as to how the punishment should be imposed for irregularities against the delinquent. Schedule XI, Part-A II. sub clause 17 clearly shows that any punishment imposed on a member of service under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall take effect from the date on which the said punishment order is served to the member of service concerned and the name of such member of service shall not be considered for inclusion in the approved list until the said punishment is over. Again referring to Sub clause 13,

learned counsel would submit that it is well settled that as per the said provision, if a member of service is imposed with punishment for irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion or appointment to a post, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion. Therefore, as per the above said Schedule, the stand taken by the respondents that since the punishment was modified as postponement of increment without cumulative effect, on Appeal, by the Director, Fire and Rescue Services in his Proceedings dated 15.11.2006, which was given effect from 01.01.2007 i.e. from his regular date of increment and hence, the currency of punishment period should be reckoned only from 01.01.2007 to 31.12.2007 covering the crucial date 15.07.2007, the denial of his promotion is in order, is wholly unacceptable. Although the respondents have considered the case of the petitioner for promotion in the year 2008-09 in G.O. (D) No.553, Home Department dated 29.06.2009, in view of the fact that the petitioner subsequently retired from service and the punishment imposed against the petitioner came to an end on 22.02.2007, the impugned G.O. passed by the first respondent is liable to go.

4.Learned Additional Government Pleader appearing for the respondents submitted that when the petitioner has not disputed the fact that on facing the punishment of stoppage of increment for one year with cumulative effect by order dated 23.02.2006, on Appeal it was modified into without cumulative effect by order dated 15.11.2006 which was given effect from 01.01.2007 i.e. from the regular date of increment, the petitioner cannot challenge the impugned order.

5.But this Court is unable to accept the stand taken by the respondents. The reason is that while the petitioner was imposed with the punishment of stoppage of increment for one year with cumulative effect, on Appeal dated 15.11.2006, it was modified by the Director of Fire and Rescue Services, Chennai into without cumulative effect and therefore, it is not open to the respondents to say that was given effect only from 01.01.2007. In this context, it is pertinent to extract Sub Clauses 13 and 17 of Schedule-XI, Part-A of Service Rules of Tamil Nadu Government Servants (conditions of service) Act 2016 as under:

'(13) If a member of service is imposed with punishment for irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion or appointment to a post, if the

member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion.

(17)Any punishment imposed on a member of service under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall take effect from the date on which the said punishment order is served to the member of service concerned and the name of such member of service shall not be considered for inclusion in the approved list until the said punishment is over.'

6.A perusal of the same shows that any punishment imposed for irregularities committed, his name shall be considered for promotion or appointment to a post, five years prior to the crucial date. In the present case also, the petitioner was subjected to face disciplinary proceedings by charge memo dated 21.01.2003. That clearly shows that for the irregularities committed, five years prior to the crucial date, namely 15.07.2007, he was imposed with punishment and therefore, looking at the case of the petitioner from any angle, the petitioner was fully qualified to get the promotion. However, the respondents have given promotion to the petitioner for the year 2008-09 by issuing G.O. (D) No.553, Home Department dated 29.06.2009 and he was also appointed as Divisional Officer on 29.06.2009 vide G.O. (D) No.554, Home Department dated 29.06.2009. This Court, taking note of the fact that the petitioner was imposed with punishment of stoppage of increment for one year with cumulative effect on 23.02.2006 and it came to an end on 22.02.2007, is of the view that the petitioner was fully qualified to get promotion as per the provisions stated supra. Accordingly, the impugned order is quashed and the writ petition stands allowed. The respondents are directed to give him notional promotion within a period of four weeks from the date of receipt of a copy of this order. Although the petitioner had retired from service, it will be useful for getting higher increment and pensionary benefits. Consequently, connected M.P. is closed. No costs.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
State of Tamil Nadu,
Home (Police) Department,
Secretariat, Chennai-9.

2.Director of Fire and Rescue Services,
Chennai-600 008.

+1 cc to Mr.C.S.Associates, Advocate, S.R.No.35239

+1 cc to the Government Pleader, S.R.No.35772

W.P. No.29028 of 2008 and M.P. No.2 of 2008

GJ-II(CO)
SSM(04/06/2019)



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