

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2009

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

Writ Petition No.29245 of 2008  
and  
MP No.1 of 2008

V. Mani

Petitioner

Vs

The General Manager  
Chennai Metropolitan Water Supply and  
Sewerage Board  
No.1, Pumping Station Road  
Chintadripet  
Chennai - 600 002

Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records from the Respondent relating to the impugned Proceedings Proc.No.CMWSSB/P & A/STF/RA1/32493/2007 dated 15.11.2007 and quash the same and further direct the respondent to promote the petitioner as Draftsman-cum-Surveyor with retrospective effect from 1998 and give all consequential benefits.

For Petitioner : Mr.R.Rajaram

For Respondent : Mr.T. Gowthaman  
Standing Counsel

O R D E R

This Writ Petition has been filed by V. Mani, Typist, challenging the correctness of the impugned Order dated 15.11.2007 passed by the General Manager of Chennai Metropolitan Water Supply and Sewerage Board, Chennai, refusing to consider his request for promotion as Draftsman cum Surveyor by transfer from one service to another service.

2. The Writ Petitioner was working as a Typist in Chennai Metropolitan Water Supply and Sewerage Board, Chennai. On completion of his Diploma in Civil Engineering in the year 1998, he gave a request for promotion as Draftsman-cum-Surveyor

by transfer from one service to another service, which was not considered by the respondent Board on the ground that his request for promotion as Draftsman-cum-Surveyor, will be considered only after improvement in his performance.

3. The learned Counsel appearing for the petitioner would submit that the petitioner has put 27 years of service in the Respondent Board. His request for promotion from Typist to Draftsman-cum-Surveyor by transfer from one service to another service was not considered by the Board for the reasons best known to them. In the mean while, he has been issued a charge memo on 12.12.2003 stating that he was irregular in his work, absent from duty without prior permission for three days, etc, The learned Counsel appearing for the petitioner would submit that on his joining duty, he gave explanation that he has availed Earned Leave for 5 days due to B.E. Examination. Subsequently, due to his ill-health and as per Doctor's advice, he applied for medical leave and the same also sanctioned by the Board. The General Manager, who was Disciplinary Authority considered his reply and imposed a punishment of Censure on 21.01.2004. The said punishment was a bar for considering his name for promotion for a period of one year from the date of Order of the punishment.

4. The learned Counsel appearing for the petitioner would further submit that on 12.06.2005, the petitioner gave a representation to the Managing Director of the Board, and that too not considered by the Board. In the meantime, the Respondent Board has issued a Circular dated 27.09.2006 stating that the board was intending to fill up the existing vacancies for the post of Surveyor-cum-Draftsman by method of transfer from other services and requested the employees, who has the required qualifications to submit the applications. The petitioner also submitted his application on 09.10.2006, unfortunately his name was not considered. Moreover, his further representations on 03.01.2007 and 21.06.2007, were also in vain.

5. It is further submitted by the learned Counsel for the petitioner that the petitioner has filed a Writ Petition No.32597 of 2007 before this Court. This Court by its order dated 09.10.2007, directed the Respondent Board to consider the petitioner's representation dated 21.06.2007 for his promotion as Surveyor-cum-Draftsman and pass appropriate orders on merits and in accordance with law, within a period of 6 weeks. In pursuance of the direction of this Court in WP.No.32597 of 2007, the respondent Board has passed the impugned order dated 15.11.2007 refusing to consider the petitioner's name for promotion stating that while considering his various representations from the year 1998 to 2004, it has been noticed that several punishments were awarded to him for his

disobedience and misbehaviour with his Officers. Finally, the petitioner has come forward before this Court with this Writ petition.

6. Detailed Counter Affidavit has been filed by the learned Counsel for the respondent stating that while considering the request of the petitioner for promotion for the post of Surveyor-cum-Draughtsman by transfer from other service method, it has been noticed by the Board, several punishments were awarded to the petitioner for his disobedience and misbehavior with this office on various occasions and it is decided by the Employment Committee to consider his representation for promotion, after monitoring his performance once in 6 months. But every occasion, the Controlling Officer had given adverse remarks about the performance of the Petitioner. Hence, the petitioner approached this Court by filing WP.No.32597 of 2007 and this Court vide its order dated 09.10.2007 directed the respondent Board to consider the petitioner's representation on merits. The Board in pursuance of the direction of this Court, rejected the representation of the petitioner by its order dated 15.11.2007.

7. Heard the rival submissions. It is pertinent to extract the relevant portion of the impugned order passed by the Respondent Chennai Metropolitan Water Supply and Sewerage Board and the same is hereunder.

- i. He was awarded with a punishment of stoppage of increment for six months without cumulative effect vide Proc.No.P&A/STF/RA6/60455/86, dated 20.04.1987
- ii. He was awarded "Censure" vide Proc. No.P&A/STF/RA6/18675/94 dated 10.06.1994 for his irregular in attending to office and tampering of attendance Register.
- iii. He was awarded with a punishment of stoppage of increment for one month without cumulative effect vide Proc.No.P&A/STF/RA6/44392/94, dated 02.12.94.
- iv. He was awarded with a punishment of stoppage of increment for 6 months without cumulative effect vide Proc.No.CMWSSB/ P&A/ VC1/ 58067/ 99 dated 08.02.2000 for irregular in duties improper maintenance of typewriter, fair copy register and disobedience and misbehavior with officers.
- v. He was awarded a punishment of stoppage of increment for one year 'without cumulative effect'

vide Proc.No.P&A/VC1/22171/2002 dated 17.07.2002 for his unauthorized absence from 21.05.2002 and disobedience to the instruction of the superiors.

vi. He was awarded "Censure" vide Proc.No.CMWSSB / P&A /VC1 /46685/2003 dated 22.01.2004 for not attending duty regularly for the past 2 months while he was working as Typist in the O/o. EE (HQ). He has absented for 2 to 3 days without any intimation after that he has produced EL/Medical Certificate. Even if he attends duty, he is not turning upto seat till 12.30pm, picking up wordy dual with the consumers who come for registration, which causes dislocation in the routine work.

8. Further, it is to be noted from the impugned order of the respondent that the petitioner has been awarded with several punishments and on each occasions, his name was not considered for appointment as Surveyor-cum-Draughtsman by method of transfer from other services as per the instructions of Government in their Letter No. MS.No.248 P&AR (S) Department, dated 20.10.1997.

9. Further, it is revealed from the impugned Order that as decided by the Employment Committee, his duty performance has been called for from the Controlling Officer on regular intervals i.e once in 6 months. Every occasions, the Controlling Officers have given adverse remarks about his duty performance, ie. irregular in attending duty and in the habit of not accomplishing the work given to him within stipulated time. Moreover, in the last report dated 10.10.2007, the Controlling Officer has stated that his duty performance is poor.

10. This Court considering the fact that the Employment Committee, who is the Competent Authority, has maintained the Service Records of the petitioner, comes to the conclusion that the incumbent has undergone numerous punishments for irregularity in his duties and in view of this, the Committee felt that his case may be taken up for consideration for appointing him as Surveyor cum Draughtsman, after watching his performance, since the post to be appointed involves more responsibilities than the post now held by him

11. The respondent Board has finally come to the conclusion that the request of the petitioner for appointment as Surveyor-cum-Draughtsman will be considered only after he improves his performance in his duties.

12. Further, it is seen that, at the time of filing the Writ Petition, the petitioner was aged about 53 years. Therefore, in view of 11 long years, the petitioner would have retired from service.

13. In view of the above discussions, this Court finds no error in the impugned Order of the Respondent Board and also no merits in this Writ Petition. Hence, this Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

Sd/-  
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

vrn

To

The General Manager  
Chennai Metropolitan Water Supply and Sewerage Board  
No.1, Pumping Station Road  
Chintadripet  
Chennai - 600 002

+1cc to Mr.S.Ravi, Advocate SR.No.27942

+1cc to Mr.T.Gowthaman, Advocate SR.No.28105

Writ Petition No.29245 of 2008  
and  
MP No.1 of 2008

MG (CO)  
GMY (07/05/2019)

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