

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 06.12.2018	Order Pronounced on : 09.01.2019
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CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

W.P.No.17991 of 2018

C.Murugesan

... Petitioner

- Vs -

1. The Chief Director,
Highways Department,
Government of Tamil Nadu,
Guindy, Chennai - 600 025.
2. The Chief Secretary/Special Secretary,
Highways Department and Small Ports
(HK Department) Seretariat,
Fort St. George,
Chennai - 600 009. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus, to call for records of the proceedings No.8023/Con1/2003 dated 15.05.2018, issued by the Chief Director Highways Department, 1st respondent and to quash the same and consequently, direct the 1st respondent to promote the petitioner as Divisional Engineer with monetary benefits.

For Petitioner : Mr.C.Murugesan (Party-in-person)

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader

O R D E R

The petitioner is a retired Assistant Divisional Engineer, Highways Department. He retired on attaining superannuation on 31.12.2003.

2. The petitioner has filed this writ petition challenging the order dated 15.05.2018, by which, the petitioner's claim for promotion on par with his junior Chandrabalan and consequential service benefits, has been rejected.

3. It is stated that the Government ordered to promote the petitioner as Divisional Engineer, by placing him before his immediate junior Chandrabalan vide G.O.(D) No.5 dated 11.01.2013. As per G.O.No.425 PWD dated 09.05.1994, the petitioner was placed in S.No.16A. But, the Chief Director failed to promote the petitioner as Divisional Engineer in the Highways Department, Government of Tamil Nadu.

4. The petitioner states that he served in the Department for 33 years, during which time, there were four vague charges framed, based on which, the promotion was refused.

5. When the petitioner wanted promotion on par with his junior Chandrabalan, the Principal Director responded to the claim saying that Chandrabalan was promoted on 14.01.2004 and retired on 31.08.2004, whereas even prior to the date of promotion, i.e. prior to 14.01.2004, the petitioner got superannuation on 31.12.2003 and it was without prejudice to the pending disciplinary proceedings.

6. The learned counsel for the respondent pointed out this and claimed that there was no scope for promotion when he retired on 31.12.2003 on account of the pending charges and therefore, the petitioner cannot claim any benefit.

7. A perusal of G.O.(D) No.5 dated 11.01.2013, would reveal the following facts:

(i) In the promotion panel of the year 1991-92, petitioner's name was not included on account of pending disciplinary proceedings.

(ii) During 2000-2001 also the petitioner's name was not included on account of pending charges.

(iii) The charges were dropped by G.O.(3D) No.189 to 193, on 11.10.2002.

(iv) Thereafter, for the panel 2001-02, the petitioner's name was included and the order was released on 11.01.2003.

8. In respect of the order passed for recovery of loss of Rs.30594/-, it was challenged in O.A.No.1853 of 2003 and the Tribunal set aside the order of recovery on 26.06.2003. The order for recovery towards shortage of Rs.25735/- was ordered to be refunded to the petitioner in W.P.No.24684 of 2004. Thus, he become eligible for inclusion in the panel for the year 1994. As the name of Chandrabalan was in S.No.17, the petitioner's name was included as 16A after serial No.16 Chandrasekaran and before S.No.17 Chandrabalan.

Government Order No.425 PWD Dept. dated 09.05.1994	Officials Name	Designation
16	P.Chandrasekaran	Assistant Engineer
16A	C.Murugesan	Junior Engineer (S.C.)
17	S.Chandrabalan	Junior Engineer

9. The direction issued to include the name of the petitioner in S.No.16A has not been implemented is the main grievance of the petitioner. But, the learned Special Government Pleader appearing for the respondent would submit that order has been implemented. But, no proof has been filed before this Court to show that the order has been implemented. The impugned order dated 15.05.2018 though refers to G.O.(D) No.5 dated 11.01.2013, it nowhere indicates that G.O.(D) No.5, dated 11.01.2013 has been implemented.

10. For the reasons stated above, the proceedings dated 15.05.2018, issued by the Chief Director, Highways Department, Chennai, is quashed and the writ petition is allowed accordingly. The first respondent is directed to promote the petitioner notionally as Divisional Engineer with all monetary benefits. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chief Director,
Highways Department,
Government of Tamil Nadu,
Guindy, Chennai - 600 025.
2. The Chief Secretary/Special Secretary,
Highways Department and Small Ports
(HK Department) Seretariat,
Fort St. George, Chennai - 600 009.

+1cc to Mr.L.Murugesan, Advocate Sr.2675

W.P.No.17991 of 2018

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srg 28/01/2019