

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2019

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THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P.No.18790 of 2014

R.Gopalsamy

... Petitioner

Versus

1. The Secretary to Government of
Tamil Nadu, Home Department,
Fort St.George,
Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 600 007.
3. Thiru Ayyappan,
Inspector of Police (AR),
North Zone, Chennai - 16.

... Respondents

PRAYER:

Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings in Na.Ka.No.Papi 5 (1)/19/16976/2014 dated 19.02.2014 on the file of the second respondent and quash the same and direct the first and second respondents to grant promotion based on the principle of seniority at Armed Reserve i.e from the date of recruitment on 25.05.1988 on par with batch mates in Armed Reserve and place him above his immediate junior third respondent in the light of judgment in W.P.No.25043/2002 dated 18.02.2007 and award all consequential benefits.

For Petitioner : Mr.M.S.Soundara Rajan

For Respondent : Mr.R.Govindasamy
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the second respondent denying promotion to the petitioner on par with other Constables working on the Armed Reserve police.

2. The grievance of the petitioner is that he was appointed as a Grade II constable in the Armed Reserve Police on 25.05.1998. Thereafter, he was transferred to the Mounted Branch of Armed Reserve Police on 30.04.1991. In the year 1991, all the Armed Reserve Grade II Constables enlisted up to 1998 were called to attend the promotion test to the rank of Armed Reserve Lance Naiks. But the persons working in the Special Branches including the Mounted Wing were not permitted to attend the written test. Earlier, the persons working in the Armed Reserve and the persons working in the Mounted Branch were enlisted on the same day at Armed Reserve Police, and the Armed Reserve police constables working in the Mounted Branch were not promoted to the ranks of Lance Naiks, Naiks/Gr.I PCs or as Head Constables along with their batch mates in the Armed Reserve Police. In the said circumstances, the petitioner made a representation to the second respondent to consider the petitioner on par with the Constables working in the Armed Reserve Police. In the meantime, the persons working in the Motor Transport Wing of the Armed Reserve Police had approached the State Administrative Tribunal seeking for permission on par with the constables working in the Armed Reserve and the Tribunal has rejected their request. Challenging the same, they filed a Writ Petition before this Court in W.P.No.25043 of 2002 and a Division Bench of this Court by an order dated 18.09.2007 has held that the persons working in the Motor Transport Wing, cannot be treated as a distinct unit and they are also part of the Armed Reserve Police. In the absence of any special rules governing the service of the persons working in the Motor Transport, they cannot be denied promotion. Based on the above judgment, promotions were given to some of the constables working in the Motor Transport Wing of the Armed Reserve. Based on the above order, the petitioner has also applied for promotion, on the ground that the Mounted Wing is also part of Armed Reserve Police, but, that has been rejected by the second respondent. Now, challenging the same, the present writ petition has been filed.

3. The second respondent has filed a counter affidavit stating that the petitioner was enlisted as Grade II Police Constable in the Chennai City Police Armed Reserve on 25.05.1998 and the petitioner opted for the Specialist Wing in the Armed Reserve, i.e., Mounted Branch and he was trained in maintenance of horses in the Mounted Branch. As per the

Tamilnadu Police Subordinate Service Rules, the Special wings i.e. Armoury, Radio Transmission, Motor Transport and Band are categorized as Class I and Mounted Branch is categorized as IV. The persons, who opted for Special Wing are trained in the specialist Wing in the Armed Reserve and their promotions are regulated separately in the respective special wings based on their ability, suitability and quality with separate seniority list in the respective special wings in the Armed Reserve. The petitioner opted for transfer to the Mounted Branch, where the nature of duties and responsibilities are different from the regular line of the Armed Reserve. There is no post of Lance Naiks, or Grade I Police Constables and Head Constables in the Mounted Branch. In the said circumstances, the petitioner cannot claim promotion along with constables working in the Armed Reserve and the petitioner is only entitled for upgradation as per the Government Order.

4. The learned counsel appearing for the petitioner would submit that even though the petitioner is working as a Police Constable in the Mounted Branch, in the absence of any separate service rules, governing appointment and promotion of the persons working in the Mounted Branch, they cannot be denied promotion on par with other constables working in the Armed Reserve Police. In a similar circumstance, the Armed Reserve constable, who were working in the other Department, namely, Motor Transport Wing, has filed writ petition before this Court, and a Division Bench of this Court has held that the persons working in the Motor Transport Wing cannot be treated as a distinct and they are part of the Armed Reserve, and promotion was given to them.

5. Per contra, the learned counsel for the respondents would submit that even though the petitioner was appointed in the Chennai City Armed Reserve Police, since he opted for the specialist Wing, the promotions in the specialist Wing is governed by the separate rules. He cannot seek promotion on par with the constables working in the Armed Reserve.

6. I have considered the rival submissions and perused the materials available on record.

7. The primordial contention of the learned counsel for the petitioner is that the petitioner was appointed as Grade II Police Constable in the Chennai City Armed Reserve Police, whereas, he was transferred to one of the wings of the Armed Reserve, namely, the Mounted Branch. In the counter filed by the respondents, they have admitted that the Mounted police is one of the specialist wing of Armed Reserve Police. The learned counsel strongly relied upon a judgment of the Division Bench of this Court, wherein, it has been held that the constables

working in the Motor Transport Wing of the Armed Reserve Police are also entitled for promotion on par with the Constables working in the Armed Reserve. The relevant portion of the judgment reads as follows:

" 4. Though ample opportunity was given to the learned Additional Government Pleader, by adjourning the matter for several hearing, i.e., explain under what Special Rules the three departments, viz., Motor Transport Wing of the City Police, Chennai, Armed Reserve Police and Local Police are treated as distinct departments for the promotional avenues, he is not in a position to place before this Court, the relevant Rules. Therefore, in the absence of any Special Rules, this Court is constrained to pass orders based on the materials placed on record.

5. A perusal of the order passed by the Tribunal discloses that what has been stated in paragraphs 5,6,7, and 8 of the counter has been extracted in the order and the claim of the petitioners has been rejected without looking into the relevant rules. We are not satisfied with the reasonings given by the Tribunal in dismissing the application filed by the petitioners. Therefore, in the absence of Special Rules and Information regarding how these three departments, namely, Motor Transport Wing of the City Police, Chennai, Armed Reserve Police and Local Police are being treated as distinct departments, for promotional avenues to the persons, who are appointed under one recruitment and posted in the above three departments, we are unable to understand why the petitioners' names have not been included in the 'C' list. To a specific question put forth by this Court as to how the personnel in the Armed Reserve are getting promotions prior to the persons working in Motor Transport Wing of the City Police, Chennai, the only explanation offered by the Department is that the persons working in the Motor Transport Wing of the City Police, are being paid Special pay of Rs.40/- initially and then Rs.60/- and now Rs.120/- . The said ground cannot be a criteria for denying the promotion to the persons working in the Motor Transport Wing of the City Police, Chennai. The right to promotion should be only based on the

principle of seniority. Except saying that these three departments are distinct, no materials whatsoever has been placed before this Court under what circumstances and what Special Rules these departments are treated as distinct. Therefore, we are satisfied that to meet the ends of justice, it is appropriate to direct the respondents 1 to 3 to consider the date of recruitment as the basis for fixing seniority and effect promotion and to include the names of the petitioners in the 'C' list and give promotions to them. Accordingly, the order passed by the Tribunal is set aside and the writ petition is allowed. No costs. "

8. Now it is an admitted case that the petitioner is also appointed in the Armed Reserve and he is working in one of the wings of Armed Reserve, and it is also admitted in the counter affidavit filed by the respondent. Even though it is stated that there is a separate service rule governing the services of the Mounted Wing, no rule was placed before this Court. In the said circumstances, the Mounted Wing cannot be treated as a separate and distinct wing, and it is only a part of Armed Reserved Police, and the respondent cannot deny promotion to them. The Division Bench Judgment of this court squarely apply to the petitioners also.

9. In view of the above, the impugned order is set aside and the respondents are directed to consider the petitioner for promotion in the Armed Reserve Police fixing the seniority from the date of his appointment.

10. In the result, the writ petition stands allowed. No costs.

Sd/-

सत्यमेव जयते Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Secretary to Government of
Tamil Nadu, Home Department,
Fort St.George,
Chennai - 600 009.

2. The Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 600 007.

+1cc to Mr.M.S.Soundara Rajan, Advocate, S.R.No.2636
+1cc to the Government Pleader, S.R.No.3277

W.P.No.18790 of 2014

MG (Co)
CS/25/03/2019



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