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IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| Reserved On   | 17.03.2020 |
| Pronounced On | 19.05.2020 |

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.13466 of 2010

S.Sundar Atman

... Petitioner

Vs.

1.The Secretary to the Government  
of Tamil Nadu,  
Department of Labour Employment,  
Secretariat Building, Chennai - 600 009.

2.The Chief Inspector of Factories.  
Chepauk, Chennai.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the 1<sup>st</sup> respondent herein to pass appropriate order by promoting the petitioner herein as Joint Chief Inspector of Factories with effect from 09.01.2009 and consequently to pass appropriate order to give promotion as Additional Chief Inspector of Factories with effect from 20.11.2009, as the immediate junior of the petitioner Mr.Rathinam was already given promotion, and other service and monetary benefits accordingly so as to enable the petitioner herein to receive the same basing on the existing rule in force.

For Petitioner : Mr.G.Thangavel

For Respondents: M/s. Jayasree, Government Advocate.

O R D E R

The petitioner has filed the present Writ Petition, to direct the 1<sup>st</sup> respondent to pass appropriate order by promoting the petitioner as Joint Chief Inspector of Factories with effect from 09.01.2009 and consequently, to pass appropriate order to give promotion as Additional Chief Inspector of Factories with effect from 20.11.2009 as the immediate junior of the petitioner Mr.Rathinam was already given promotion, and other service and mandatory benefits accordingly so as to enable the petitioner herein to receive the same basing on the existing rule in force.



2. The petitioner has retired from service on attaining the age of superannuation on 31.12.2012. The petitioner was earlier issued with a Charge Memo dated 18.05.2007 under Section 17(b) of Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. In said Charge Memo, ten Charges were framed against the petitioner.

3. The petitioner requested the respondent to alter the charges framed, from Section 17(b) to 17(a) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. However, the 2<sup>nd</sup> respondent rejected the same on 14.05.2008 and communicated the same to the petitioner on 01.07.2008.

4. Since charges were framed against the petitioner, the petitioner's name was not included in the promotion panel for the year 2007-08. The petitioner thereafter made a representation on 31.10.2008 before the 2<sup>nd</sup> respondent along with relevant materials to include his name in the said promotion panel.

5. The petitioner thereafter filed a W.P.No.27669 of 2008 before this Court, for directing the respondent to pass appropriate order by promoting the petitioner as Joint Chief Inspector of Factories basing on the strict services seniority without reference to the pending disciplinary proceedings dated 18.05.2007 of the 2<sup>nd</sup> respondent. The said Writ Petition was finally disposed by an order dated 30.04.2009 with direction to the 1<sup>st</sup> respondent to pass final order in the said disciplinary proceedings on or before 31.07.2009.

6. Pending the above Writ Petition, the 1<sup>st</sup> respondent issued a Government Order dated 30.12.2008 bearing reference G.O.(D).No.648, Labour and Employment (E1) Department, approving for promotion names of three persons as Joint Chief Inspector of Factories for the year 2008-09 in the temporary panel for promotion subject to the disposal of W.P.No.8018 of 2005 (O.A.No.7431/99) & W.P.No.27669 of 2008.

7. Thereafter, the petitioner's junior, namely, Mr.Rathinam was promoted as the Joint Chief Inspector of Factories on 09.01.2009 and later as Additional Chief Inspector of Factories on 31.12.2009.

8. Meanwhile, the petitioner also retired from service on 31.12.2009 and relieved from service on the same day. The petitioner has now come up with the present Writ Petition for the aforesaid relief.



9. It is submitted that the denial of the promotion to the petitioner was contrary to D.O.Lr.No.19792/E1/2000-1/dt.30.10.2000, wherein, it has been stated as follows:-

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2. Therefore a need has arisen to ensure proper application of mind as to whether the charges may be framed under Rule 17(a) or 17(b). It is a fact that instead of adopting 17(b) procedure and in the end dropping the charge, if only 17(a) procedure has been adopted it would have simplified the matters immensely. In that case only, a simple explanation could have been called for and the case could have been decided by the disciplinary authority with available evidence. Even under Rule 17 (a), the Disciplinary authority can award the punishment of stoppage of increment upto three years without cumulative effect. Accordingly the punishment persons concerned would have been dropped from being considered for inclusion in the panel for promotion during the course of punishment. Instead of delivering a quick punishment, it has been resorted to the long winded procedure, inflicting unintended misery on the Accused Officer.

3. Therefore, it is necessary to consider and apply mind well to each and every case before deciding whether to frame charges under Rule 17(b) of TNCS (D&A) Rules. The main factors that would go in favour of framing charges under Rule 17(b) may follow that, 'Is there prima facie sufficient evidence which is likely to prove the officer guilty of grave charges as one likely to end in any one of the following punishments.

(1) Reduction in Ranks (2) Compulsory retirement (3) Removal from service (4) Dismissal from service.

Only if answers to the questions are made in the affirmative the charges may be framed under the Rule 17(b). In all other cases, it seems fine and proper that the charges may be framed under Rule 17 (a) only.

Kindly take note of the instructions for compliance and guidance.

Receipt of this D.O. Letter may be acknowledged immediately.

10. The learned counsel for the petitioner submits that denial of promotion to the petitioner was also contrary to the decision of this Court in the following decision of this



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i. M.Karupppiah Vs. The Secretary to Government and Another, order dated 02.03.2011, passed in W.P. (NPD).No.3850 of 2006.

ii.C.Selvaraj Vs. The State of Tamil Nadu, order dated 10.11.2017, passed in W.P.(MD).No.18117 of 2013.

iii.N.Swamiduraivelu Vs. The State of Tamil Nadu and Another, order dated 19.10.2011, passed in W.P.(MD).No.10834 of 2011.

11. Per contra, the learned counsel for the respondents submit that there is no irregularity and therefore, the petitioner was not entitled for promotion. It is further submitted that the promotion was subject to the final outcome of the disciplinary proceedings and that by an order dated 27.10.2009 of the 1<sup>st</sup> respondent, the petitioner was found guilty of the ten charges. It is submitted that considering the fact that the petitioner was retiring on 31.12.2009, the petitioner was imposed with a minor penalty of "Censure". It is therefore submitted that merely because, the petitioner has been imposed with a minor penalty of "Censure" does not erase the guilt of the petitioner for major charges under Rule 17(b) of Tamil Nadu Civil Services (Classification, Control and Appeal) Rules.

12. The respondents submitted that name of the petitioner was included in the panel of Deputy Chief Inspector of Factories fit for promotion as Joint Chief Inspector of Factories for the year 2007-2008 with the specific remarks that he may be considered at his turn, since he was the second person in the seniority list but as there was only one vacancy during the year 2007-2008, his senior, Mr.S.Ragunathan was promoted as Joint Chief Inspector of Factories.

13. The name of the petitioner could not be included in the panel during the year 2008-2009, for the reason that departmental disciplinary proceedings were initiated and pending, under Rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules against the petitioner. Hence, a proposal was sent to the 1<sup>st</sup> respondent by the 2<sup>nd</sup> respondent recommending that his name may be deferred for inclusion in the panel of Deputy Chief Inspector of Factories fit for promotion to the post of Joint Chief Inspector of Factories for the year 2008-2009 as per the guidelines issued in Government's Letter (Ms) No.248, dated 18.10.1993, Personnel and Administrative Reforms Department.



14. It is further submitted that though the petitioner was the first person for the panel year 2008-2009, by the time of preparation of panel, the departmental disciplinary proceedings were initiated and pending against the petitioner under rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules and therefore, the petitioner's name could not be included.

15. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents and case laws submitted.

16. The petitioner's name was considered for promotion to the post of Joint Chief Inspector of Factories for the year 2007-2008 with the specific remarks that he may be considered at his turn as he was the second person in the seniority list. Since there is one vacancy during the year 2007-2008 his senior, Mr.S.Ragunathan was promoted as Joint Chief Inspector of Factories.

17. However, by the time the next panel for promotion during the year 2008-2009 was being prepared, the petitioner had been issued with a Charge Memo dated 18.05.2007, for punishing under 17(b) Tamil Nadu Civil Services (Classification, Control and Appeal) Rules and therefore, the petitioner's name was not included for consideration to the post of Joint Chief Inspector of Factories.

18. The enquiry officer has recorded the petitioner's submission. There is no cross examination. On any contrary no other documents were produced before the enquiry officer to rebutt the defences of the petitioner before the enquiry officer. The petitioner had filed W.P.No.27669 of 2008 to promote himself as Joint Chief Inspector of Factories without reference to the pending the disciplinary proceedings dated 18.05.2007 of the 2<sup>nd</sup> respondent.

19. This Court by its order dated 30.04.2009, directed the 1<sup>st</sup> respondent Secretary to Government of Tamil Nadu, Department of Labour and Employment, to pass an final order in the disciplinary proceedings. The said disciplinary proceedings culminated in a G.O.No.586, dated 27.10.2009.

20. The 1<sup>st</sup> respondent found the petitioner guilty of all the ten charges by disagreeing / dissenting with the findings of the Enquiry Officer and has awarded a minor penalty of "Censure" taking into account of the fact that the petitioner

<https://hcservices.mca.gov.in/hcservices> 31.12.2009.



21. In M.Karuppiyah (supra), this Court has held that "There are no specific provisions to the Tamil Nadu State and Subordinate Service Rules, denying or depriving promotion on the ground of stoppage of increment for three years without cumulative effect." The respondents there were directed to consider the name of the petitioner therein for inclusion of his name in the approved list of Tashildars for the year 2005.

22. In C.Selvaraj (supra), this Court held that since the punishment imposed on the petitioner was only that of 'Censure', it cannot come in the way of grant of service benefit.

23. In Swamiduraivelu (supra), this Court has held as follows:-

6. In view of the above settled legal position, there cannot be any embargo for one year in the case of censure for being considered for promotion for a further period, accordingly, the writ is granted in favour of the petitioner. Consequently, the respondents are directed to include the name of the petitioner in the panel of Additional Superintendent of Police fit for promotion to the post of Superintendent of Police for the year 2011 in accordance with seniority without reference to the censure.

24. The Hon'ble Supreme Court in Union of India & Others Vs. A.N.Mohan, (2007) 5 SCC 425, while dealing with Rule 3.1 of the Office Memorandum Relating to Promotion of Government Servants dated 14.09.1992 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, has held that the arguments that awarding of censure does not amount to awarding of penalty was clearly untenable.

25. There, the Hon'ble Supreme Court relied its earlier view in Union of India and etc. Vs. K.V.Janakiraman etc., AIR 1991 SC 2010, wherein, the Court held as follows:-

"26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which



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he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee, etc. In such circumstances, the authorities concerned must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first subparagraph after clause (iii) of para 3 of the said memorandum viz. 'but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion', we direct that in place of the said sentence the following sentence be read in the memorandum:

'However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the authority concerned by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.'

"

26. The Hon'ble Supreme Court in A.N.Mohan (supra), therefore concluded that awarding of "Censure" could be a blameworthy factor. The decision was in the context of Rule 3.1 of the aforesaid Memorandum, wherein, if any penalty is



imposed on a Government servant as a result of the disciplinary proceedings of if he is found guilty in the Criminal prosecution against him, the findings of the sealed cover / covers shall not be acted upon. His case for promotion may be considered by the next Departmental Promotion Committee in the normal course and having regard to the penalty imposed on him.

27. There the Court further held that the employee was given promotion with effect from 26.11.2001 and therefore his claim for promotion with effect from 01.11.1999 was clearly unacceptable and therefore, the CAT and the High Court were not justified in holding that the employee was entitled for promotion with effect from 01.11.1999.

28. While dealing with the provisions of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, 1955 and Article 309 of the Constitution of India, the Full Bench of this Court in The Deputy Inspector General of Police and Another Vs. V.Rani, 2011 (3) CTC 129, has considered the issue. The Full Bench of this Court in V.Rani (supra) examined the several decision of the Hon'ble Supreme Court and had stated that during the currency of punishment, no one can claim promotion as a matter of right. It can never be said that even after the period of punishment is over, in between the date of crucial date and the date of punishment there must be one year in case of censure and five years in other cases as disqualification period. The above said impediment in the name of 'check period' can never be imposed on a Government servant. Even though it has not been issued as Statutory Rules under the Proviso to Article 309 of the Constitution of India, the said letter stating the currency of punishment as an embargo for considering for further promotion during the period of punishment cannot be said to be antithesis to the principles of law. The embargo imposed in respect of further period as stated above can never be said to be authorized under the Statutory Rules. The said Government Letter can be treated as a circular issued by the Secretary to Government to all departments.

29. Ultimately, the Full Bench of this Court in above decisions, summarized its views as follows:-

28. Therefore, after analysis of the entire law on the subject, we answer the reference as follows:

(1) During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion and to that extent, the finding of the Division Bench in Subramanian v. Government of Tamil Nadu, rep. by its Secretary, Chennai, 2008 (5) MLJ 350, stands overruled. It is needless to state that



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after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible.

(2) If any benefit has been conferred on the party to the judgment rendered by the Division Bench in Subramanian v. Government of Tamil Nadu, rep. by its Secretary, Chennai, 2008 (5) MLJ 350, the same shall not be affected by the judgment of this Bench since there is a factual finding in that case that there was a technical lapse committed by the delinquent and no financial loss caused.

(3) The detailed instructions issued by the Government in G.O.Ms. No. 368, Personnel and Administrative Reforms Department, dated 18.10.1993 issued by the Chief Secretary to Government by order of the Governor, cannot be equated to the Statutory Rules framed under the proviso to Article 309 of the Constitution of India and it can utmost be Administrative Instructions issued under Article 162 of the Constitution of India. In any event, the said Government Order does not deal with the case of promotion of a Government servant during the currency of punishment.

(4) The Government Letter No. 18824/S/2005-2, Personnel and Administrative Reforms (S) Department, dated 7.10.2005 with annexures 1 to 7 and the letter No. 248 (P&AR) Department, dated 20.10.1997 are not Statutory Rules framed under Proviso Article 309 of the Constitution of India and cannot be read either with the Tamil Nadu Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

(5) Consequently, the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of 'check period' viz., one year in the case of censure and five years in the case other minor punishments is illegal and impermissible under the Statutory Rules.

30. As far as promotion on account of seniority is concerned, Rule 36 of the Tamil Nadu State and Subordinate Services Rules throws some light. Same is reproduced below:-

36. (a) Promotion—No member of a service or class of a service shall be eligible for promotion from the category in which he was appointed to the service unless he has satisfactorily completed his probation in that



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category:

Provided that a member of a service or class of a service who, having satisfactorily completed his probation in the category in which he was appointed to the Service, has been promoted to the next higher category shall, notwithstanding that he has not been declared to have satisfactorily completed his probation in such higher category be eligible for promotion from such higher category :

\*Provided further that if scales of pay of posts in the feeder categories are different, the persons holding post carrying a higher scale of pay in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category are available, the persons holding post carrying the next higher scale of pay in descending order in other feeder categories shall be considered.

\*Added in G.O.Ms.No.400. P & AR (Per.P), dt.17-4-85, w.e.f.13-10-84

(b) (i) Promotions to selection category or grade-- Promotions in a service or class to a selection category or to a selection grade shall be made on grounds of merit and ability, seniority, being considered only where merit and ability are approximately equal. The inter-se-seniority among the persons found suitable for such promotion shall be with reference to the inter-se-seniority of such persons in the lower post.

\* (ii) Promotion according to seniority - All other promotions shall, be made in accordance with seniority unless--

- (1) the promotion of a Member has been withheld as a penalty, or
- (2) a Member is given special promotion for conspicuous merit and ability.

\*Substituted in G.O.Ms.No.295, P & AR, dt-12-5-1988, w.e.f. 11-6-87.

#(c) Appointment of a member to higher category not to be considered if he had been on leave for three or four years or more continuously-- Notwithstanding anything contained in sub-rules (a) and (b), a member



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of a service who had been on leave for a period of three years continuously for any reason except higher studies or for a period of four years continuously for higher studies, shall not be considered for appointment to a higher category either by promotion or by recruitment by transfer unless he has completed service for a period of one year from the date on which he joins duty on return from leave.

# inserted in G.O.Ms.No.863, P & AR (Per.P), dt.2-9-86, w.e.f. 28-3-1984.

(d) Deleted [ in G.O.Ms.No.863, P & AR, dt 2-9-1986.]

31. Therefore, unless promotion was withheld as a penalty all promotions are to be in accordance with seniority. In the present case, promotion was withheld on account of pending disciplinary proceedings under the Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, 1955.

32. Though the petitioner has been found guilty of ten charges, he has been awarded a minor punishment of "Censure" simplicitor by the 1<sup>st</sup> respondent in G.O.(D).No.586, dated 27.10.2009.

33. The Full Bench of this Court in V.Rani (supra) has further clarified that the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of 'check period', viz., one year in the case of censure and five years in the case other minor punishments is illegal and impermissible under the Statutory Rules.

34. Further, it is evident that the Enquiry Officer has accepted the defence of the petitioner and all the charges were proposed to be dropped. The 1<sup>st</sup> respondent has however proceeded to hold the petitioner guilty of all the offences by disagreeing with the finding of the Enquiry Officer, but at the same time has imposed the minor penalty of 'Censure'. Thus, it is evident that the charges that were framed and drawn up against the petitioner were not framed properly.

35. Under these circumstances, I am inclined to allow this Writ Petition with consequential relief to the petitioner. The respondents are directed to calculate and arrive at the consequential benefits that are available to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order and pay the arrears to the petitioner within such period.



36. Accordingly, this Writ Petition stands allowed with the above observations. No cost.

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Sd/-  
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary to the Government  
of Tamil Nadu,  
Department of Labour Employment,  
Secretariat Building,  
Chennai - 600 009.

2.The Chief Inspector of Factories.  
Chepauk, Chennai.

+1cc to Government Pleader SR.No.24122

W.P.No.13466 of 2010

LN(CO)  
GMY(13/07/2020)