

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

Writ Petition No.30150 of 2010 and
M.P.Nos.1 of 2010 and M.P.No.2 of 2013

N.Dhandapani

... Petitioner

Vs

1. The General Manager,
Tamil Nadu State Transport Corporation,
Villupuram 'Division-III' Limited,
Kancheepuram Region,
Kancheepuram District.
2. The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram-Division III Limited,
Villupuram, Villupuram District.
3. The State of Tamil Nadu
rep. by its Secretary,
Transport Department,
Fort St. George, Chennai-9. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents herein to obey the Government Order in G.O.Ms.No.246, Transport (C1) Department dated 27.12.2004 and to promote the petitioner herein as a Senior Superintendent w.e.f. 03.02.2002 i.e. on completion of six years of service in Superintendent Cadre which is a time bound promotion as the petitioner was promoted as a Superintendent with effect from 03.02.1996 irrespective of charges pending.

For Petitioner	: Mr.V.Ajay Khose
For Respondents	: Mr.C.S.K.Sathish, Standing Counsel for R1 and R2 Mr.M.Digvijaya Pandian, Addl.G.P. For R3

O R D E R

The petitioner who retired from service on reaching the age of superannuation w.e.f. 30.04.2007 after rendering 32 years of service has been imposed with a punishment of stoppage of one increment along with recovery of a sum of Rs.18,486/-. Aggrieved over the same, the present Writ Petition has been filed to issue a Writ of Mandamus, directing the respondents herein to obey the Government Order in G.O.Ms.No.246, Transport (C1) Department dated 27.12.2004 and to promote the petitioner herein as a Senior Superintendent w.e.f. 03.02.2002 i.e. on completion of six years of service in Superintendent Cadre which is a time bound promotion as the petitioner was promoted as a Superintendent with effect from 03.02.1996 irrespective of charges pending.

2. Learned Counsel appearing for the petitioner placed two peculiar arguments. Firstly, when the petitioner was due for promotion on 03.02.2002, he was issued with a Charge Memo on 02.11.2004. Therefore, he is entitled to get the promotional benefits for the reason that on the due date of promotion on 03.02.2002, there was no any charge issued against him. But after two years when the petitioner and others were charge sheeted vide charge sheet dated 02.11.2004, the respondents have applied the pick and choose method by providing promotion to others. Therefore, according to the learned Counsel for the petitioner, the respondents, on their own whims and fancies, while giving promotion to 11 other persons, they cannot ignore and discriminate the petitioner alone. Hence, the approach adopted by the respondents in not giving promotion to him on par with his co-delinquents is unsustainable. Continuing his argument, the learned Counsel further submitted that there is no rule or provision withholding or denying promotional avenues on the ground that the petitioner has suffered a departmental proceedings two years after he was due for promotion. It is also submitted that when 11 other similarly placed co-delinquents were given promotion subject to the result of the pending charges, the petitioner also should have been given promotion along with other co-delinquents. The reason being that when the petitioner finally suffered the punishment of stoppage of one increment and recovery which vary from person to person, therefore, on the ground of discrimination, the order denying promotion to the petitioner is liable to be set aside.

3. A detailed counter affidavit has been filed by the 1st respondent.

4. Learned Counsel appearing for the respondents 1 and 2 submitted that when the petitioner worked at Chengelpet Depot from September, 1997 to January, 2002 and during the said

period, the denomination of tickets to the tune of Rs.7,20,952.75 were not traceable. Hence charges were framed against the petitioner vide No.129/1829/L7/TNSTC/2004 dated 02.11.2004 and the same was also served upon him. In the meanwhile, though the post of redesignation to the higher post begins on 10.02.2002 after completing his earlier period of service on the existing post, the same was not considered due to the Government Order dated 27.12.2004 because the charge sheet was issued on 02.11.2004. Only considering the pending charges, the petitioner was not considered for his promotional post. Since the petitioner filed a Writ Petition against the probationary order, the same was ordered on 01.03.2007. In the meanwhile, the disciplinary proceedings were initiated against him and 30 other employees and 3 officers. The disciplinary proceedings initiated against all of them finally came to an end and in the end, all the charges were established against all of them. Therefore, the punishment of postponement of one increment was imposed. So far as the petitioner is concerned, the postponement of one increment was imposed against him with a direction him to pay a sum of Rs.18,486/- towards the loss of ticket.

5. The learned Counsel for the respondents 1 and 2 further submitted that moreover, in the Writ Petition in W.P.No.24693/2006, this Court by order dated 14.02.2008 directed the respondents to proceed further based on the report of the Enquiry Officer and pass final orders within one month from the date of receipt of a copy of the order and thereupon to settle all the terminal benefits to the petitioner. Based on the order passed by this Court dated 14.02.2008 in W.P.No.24693/2006, the punishment imposed on the petitioner was modified vide order dated 07.03.2008. However, with regard to the declaration of the date of probationary period, the respondents wrongly cancelled the declaration of probationary period for which the petitioner came to this Court with W.P.No.13078/2009 seeking to set aside the order cancelling the declaration of probation. Therefore, although the petitioner was due for promotion on 03.02.2002, he has not given promotion and in the meanwhile, the charge memo was issued on 02.11.2004 and finally this Court by order dated 14.02.2008 in W.P.No.24693/2006 has given liberty to the respondents to proceed against the petitioner to pass final orders and accordingly, he was found guilty as per the report of the Enquiry Officer and the punishment of stoppage of increment for one year was imposed without cumulative effect along with recovery of Rs.18,486/-. Although the petitioner was due for promotion on 03.02.2002, subsequently, before giving promotion, when he was issued with the charge memo and finally, the charge

memo was also ended in postponement of one increment along with recovery of Rs.18,486/-, it is not justifiable on the part of the petitioner to ask for promotion on the ground that the other similarly placed persons were given promotion.

6. Heard the learned Additional Government Pleader appearing for the 3rd respondent. I have also perused the materials available on record carefully.

7. This Court also finds merits on the submission made by the learned Counsel for the respondents 1 and 2. The reason being that when the petitioner was due for promotion on 03.02.2002 along with 11 other persons, he was issued with a charge memo on 02.11.2004. Till then, it is an admitted case that there was no promotion given to anyone either to the petitioner or to the 11 other delinquents. But the case of the petitioner is that when the respondents had charge sheeted petitioner and 11 other persons, when the 11 other persons were given promotion during the period which they were all facing the charges and subsequently, the charges were also ended in punishment of stoppage of one increment, only the petitioner was not given promotion. Therefore, according to the learned Counsel for the petitioner, the respondents, on their own whims and fancies, while giving promotion to 11 other persons, they cannot ignore and discriminate the petitioner alone.

8. There is no any merit on the submission made by the learned Counsel for the petitioner because when the law is well settled that a person although was found suitable for promotion on a due date, subsequently, before giving promotion, if he suffered any charge memo and the said charge memo ended in punishment, the person who was found suitable for promotion need not be given promotion for the reason that subsequently, before he was given promotion, he sustained charge memo and that was also ended in punishment. In the present case also, when the petitioner was due for promotion, before the promotion was given to him, he sustained charge memo on 02.11.2004 and that was ended in postponement of increment for one year and to pay a sum of Rs.18,486/- towards loss of ticket. Therefore, the petitioner cannot compare his case with others who were also wrongly given promotion. In view of all the above, I find no merit in the Writ Petition.

9. In the result, the Writ Petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar -ADI (MDU)

//True Copy//

Sub Assistant Registrar

tsi

To

1. The General Manager,
Tamil Nadu State Transport Corporation,
Villupuram 'Division-III' Limited,
Kancheepuram Region, Kancheepuram District.
2. The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram-Division III Limited,
Villupuram, Villupuram District.
3. The Secretary, State of Tamil Nadu.
Transport Department,
Fort St. George, Chennai-9.

+1cc to Mr.C.S.Sathish, Advocate, S.R.No. No.20349
+1cc to Mr.V. Ajay Khose, Advocate, S.R. No.19966
+1 cc to the Government Pleader, S.R.No.20669

W.P.No.30150 of 2010

RK (CO)
VSI-2(27.05.2020)

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