

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.08.2020

CORAM:

THE HON'BLE MR. JUSTICE V.PARTHIBAN

WP No.9434 of 2020
and WMP Nos.11528 & 11529 of 2020

S.Rajesh

.. Petitioner

Vs

1. The Principal Chief Conservator of Forests,
Head of Forest Department,
Saidapet,
Chennai - 600 015.

2. The Chief Conservator of Forests,
Chennai Region,
Forest Department,
Chennai - 600 015.

3. The District Forest Officer,
Thiruvallur Forest Division,
Thiruvallur,
Thiruvallur District.

4. The Divisional Forest Officer,
Chengalpet Social Forest Division,
Chengalpet,
Chengalpet District.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records of impugned orders of the 1st respondent dated 12.11.2018 in proceeding No.BB2/28803/2017-2 and consequential order of the 2nd respondent dated 22.02.2019 in Se.Mu.R.No.Pa1/3121/2014 and quash the same, consequently direct the respondents to promote the petitioner as Forest Range Officer in the panel of year 2019-20.

For Petitioner
For Respondents

: Mr.M.R.Jothimanian
: Mr.M.Ezhumazhai
Government Advocate (Forests)

O R D E R

This matter was taken up today, through web hearing.

2. The petitioner has approached this Court, seeking the following relief:

"for issuance of a Writ of Certiorari Mandamus, calling for the records of impugned orders of the 1st respondent dated 12.11.2018 in proceeding No.BB2/28803/2017-2 and consequential order of the 2nd respondent dated 22.02.2019 in Se.Mu.R.No.Pa1/3121/2014 and quash the same, consequently direct the respondents to promote the petitioner as Forest Range Officer in the panel of year 2019-20."

3. The case of the petitioner is that he was appointed as Forester on 24.01.2011. He was issued with a Show Cause Notice / Charge Memorandum dated 14.10.2016. under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, for not reporting illicit felling of two Red Sand trees in Vembedu Reserve Forest on 06.02.2014. The petitioner on receipt of the Show Cause Notice / Charge Memorandum, denied the allegations contained in the Show Cause Notice / Charge Memorandum. Subsequently, the disciplinary authority passed an order on 23.06.2017, imposing a punishment of postponement of increment for a period of one year without cumulative effect.

4. According to the petitioner, the punishment was imposed contrary to the reports, as the petitioner was not at all to be blamed in discharging of his duties. According to the petitioner, the one Forest Guard who was also charged with the same lapse was however, allowed to retire from services on 30.06.2017. Moreover, the petitioner also contended that for the incident which is stated to have taken place in 2014, the Show Cause Notice / Charge Memorandum, was issued after a period of two years i.e., in the year of 2016.

5. The petitioner preferred an appeal to the appellate authority and the appeal was pending for some time. In the mean time, the punishment of postponement of increment was also given effect to, for the year 2017-18. But, subsequently, the punishment was cancelled by order dated 12.11.2018, by the 1st respondent, on the ground that when more than one officer was involved and when common charges were framed, the procedure contemplated in the rules was not followed and hence, the 1st respondent remanded the matter to the 2nd respondent and restored the Show Cause Notice / Charge Memorandum dated 04.10.2016. The petitioner in the meanwhile had come within the zone of consideration for promotion to the post of Forest Range Officer in the year 2018-19.

6. Thereafter, for the very same allegation, the very same punishment was imposed i.e. postponement of increment for a period of one year without cumulative effect, by a subsequent proceedings dated 22.02.2019. When the earlier order was passed on 23.06.2017, the same was interfered with only on the technical ground that the disciplinary action was not as per the rule, when more than one officer was involved. So, it was only to correct a technical error, but, in effect the imposition of penalty on the petitioner was the same. But, unfortunately in the bargain, according to the petitioner, when the order was issued on 22.02.2019, his promotion was affected even after the completion of the punishment period in 2018 and therefore, he is before this Court, challenging the order dated 12.11.2018, cancelling the earlier proceedings and also the subsequent order of the same punishment imposed on the petitioner dated 22.02.2019.

7. The learned counsel Mr.Jothimanian, appearing for the petitioner would submit that in view of the unfortunate development as above, the petitioner was not considered for promotion to the next higher post of Forest Range Officer. Therefore, he represented to the 1st respondent on 13.03.2020, seeking promotion to the post of Forest Range Officer in the panel year for 2019-20, as the punishment in this case, has already worked itself out in 2018.

8. In response to the notice, Mr.M.Ezhumazhai, learned Government Advocate (Forests) appeared on behalf of the respondents and a counter affidavit has been filed.

9. The above facts have not been disputed at all. The only reason for not considering the promotion of the petitioner as Forest Range Officer was that he was not qualified as on 15.08.2019, as a fresh order of punishment was issued on the petitioner only on 22.02.2019. However, it is also an admitted position that an earlier order which was imposed on the petitioner, was given effect to in January 2018, immediately after the first order was passed on 23.06.2017 and was over very much before the date of consideration for promotion for the present panel year 2019-20 as on 15.08.2019.

10. When the admitted position is as such even as per the counter affidavit, this Court does not find any reason why the petitioner can be denied promotion as Forest Range Officer for the year 2019-20. This Court can understand that for the earlier year promotion 2018-19, the petitioner was undergoing penalty, but, is unable to appreciate as to how petitioner can be denied promotion for the subsequent year also, on the basis of the very same punishment.

11. The petitioner is not at all at fault for bringing about the situation as narrated above. When the original disciplinary proceeding was cancelled on a very hyper-technical consideration, no doubt, with reference to the rules, but, at the same time, unintended adverse consequences cannot be allowed to befall the petitioner, like in the present case. If the punishment is to be given effect to afresh after 22.02.2019, then it is not only a simple order of postponement of increment, but, also denial of promotion, as well. Such a situation could not have been envisaged by the authority, while imposing the same punishment on the petitioner, on two occasions as a consequence of the very same charge.

12. In any event, when admittedly, the 1st punishment order dated 23.06.2017 had worked itself out immediately, thereafter, the present punishment order dated 22.02.2019 was only a corrective measure to overcome a technical flaw, which cannot be detrimental to the interest of the writ petitioner and therefore, the subsequent order dated 22.02.2019, is deemed to have merged with the original order, in which case, the petitioner is entitled to be considered for promotion as Forest Range Officer, if he is otherwise fit for consideration for the year 2019-20.

13. In the said circumstances, both the impugned orders viz., the order of the 1st respondent dated 12.11.2018 in proceeding No.BB2/28803/2017-2 and consequential order of the 2nd respondent dated 22.02.2019 in Se.Mu.R.No.Pa1/3121/2014, are set aside, only in so far as it results in adverse consequences on the subsequent promotion of the petitioner, as Forest Range Officer for the year 2019-20. The respondents are directed to consider the case of the petitioner as Forest Range Officer for the year 2019-20 and grant him promotion, if he is otherwise fit for such promotion, with all attendant benefits on such promotion, including seniority and monetary benefits.

14. The writ petition is allowed, as indicated above. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

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-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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Chengalpet,
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+1cc to Special Government Pleader in SR.28082

WP No.9434 of 2020

RSV(CO)
RV (14/09/2020)



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