

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 28.02.2020

ORDER PRONOUNCED ON : 03.06.2020

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THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.NO.11798 OF 2014

D.Baskaran

..Petitioner

Vs

1. Director General of Police (Law & Order)
Dr.Radhakrishnan Road,
Mylapore, Chennai-600004.

2. Director General of Police,
TNUSRB (Tamilnadu Uniformed Services
Recruitment Board),
Chennai -600002.

... Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to grant retrospective promotion to the petitioner by promoting him as an Inspector of Police on par with his S.I of Police batch mates of the recruitment year 1997-98 with all consequential benefits together with inter-se seniority of the petitioner on par with his said batch mates of the recruitment year 1997-98.

For Petitioner : Mr.K.Ravi Ananthapadmanaban

For Respondents : Mr.P.H.Aravind Pandian, AAG

Assisted by Mr.J.Ramesh, AGP

ORDER

The prayer sought for in the Writ Petition is to direct the respondents to grant retrospective promotion to the petitioner by promoting him as an Inspector of Police on par with his S.I of Police batch mates of the recruitment year 1997-98 with all

consequential benefits together with inter-se seniority of the petitioner on par with his said batch mates of the recruitment year 1997-98.

2. Brief facts of the case:

The writ petitioner had joined in the police department as a constable in the year 1988. He appeared for S.I. Selection under 20% quota for departmental candidates in the year 1997 and got selected up to the final stage, but he was not given promotion. At the time of applying for the above said selection, he had been wearing spectacles for over six years and he completed 11 years of service in the department. Based on the opinion of the Medical Board, the respondents wrongly withheld the petitioner's opportunity. After obtaining favourable orders from the High Court, which was subsequently confirmed by the Hon'ble Supreme Court, the petitioner was allowed for medical examination and set for one year statutory training and posted as S.I. in the year 10.06.2011. He sent a representation to the respondent on 19.08.2013 for retrospective seniority and promotion on par with his juniors. The same was not considered by the respondent till date, hence this writ petition.

3. Heard the learned Senior Counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the documents available on record.

4. The learned Counsel for the petitioner submitted that the writ petitioner seeking retrospective seniority for the post of Inspector of Police on par with his batch mates of the recruitment. His batchmates having been sent for training, the first batch in the year 1999 and the 2nd batch in the year 2000. The petitioner is claiming appointment only from the date of appointment of his batch mates by way of inter-se-seniority based on the marks secured by him at the police training college.

5. The learned counsel appearing for the petitioner further submitted that during selection process, on 17.02.1999, the medical test was conducted to the petitioner after his successful completion in the written, physical and viva-voce. On 23.02.1999, the Medical Board opined that the petitioner was fit to work with glasses and the eye standard of 6/6 in both eyes has been prescribed only by the Department (TNUSRB). But the said report was not communicated to the petitioner. The last paragraph of the Medical report clause (iii) is as follows;

"...the candidate is free from any permanent infirmity or incurable disease, but is suffering from the following infirmity/curable disease which can possibly be treated and cured within three months. Hence, he/she shall reappear before this Board for a second Medical opinion at the end of the third month or earlier (observations should be recorded below by the Medical Officer...)"

6. The learned counsel for the petitioner further submitted that the petitioner has filed O.A No. 1963 of 1999 before the Tamilnadu Administrative Tribunal (TA). By common order dated 16.10.2003, the said application was dismissed. Against the said order, the petitioner has filed a writ petition before this Court in W.P.No. 19714 of 2004. The Hon'ble Division Bench of this Court by order dated 04.11.2006, has directed the respondents to conduct fresh medical tests within 12 weeks. Not obeying the above order of this Court, the respondents preferred SLP No.21220 of 2007 before the Hon'ble Supreme Court. After notice, the SLP was dismissed on merits by order dated 08.03.2010. Then only, the petitioner was sent for one year training and appointed as Sub Inspector of Police w.e.f. 07.06.2011. Therefore, the delay was purely on the part of the respondents, who did not supply the medical board report. He could have corrected his eye sight and come out successfully along with his batch mates in the year 2000 itself and could have promoted as Inspector of Police in the 2010 itself.

7. Hence by citing the judgments of this Court in similar cases and Government Orders, the learned counsel has submitted that the petitioner's representation has to be considered by the respondents and fix him at proper seniority and also to grant promotion to the cadre of Inspector of Police.

8. On the other hand, the learned Additional Advocate General appearing for the respondents submitted that the petitioner has participated for selection along with other candidates in the year 1997-98 recruitment, but due to eye defect he was not selected. As ordered by this Court in W.P. No. 19714 of 2004 dated 04.11.2006 filed by the petitioner herein and subsequent dismissal of the SLP filed by the 2nd respondent as against the aforesaid order of this Court, fresh medical test has been conducted by the Medical Board. Since the medical examination reveals that the eyes of the petitioner are fit for the post of Sub Inspector of Police, he was given appointment as Sub Inspector of Police and directed to undergone training at Tamil Nadu Police Academy from 10.06.2011 along with 2010 batch candidates, those who undergone training w.e.f. 01.02.2011. After completion of training, the he was posted as Sub Inspector

of Police (Taluk) on 17.12.2012.

9. The learned Additional Advocate General appearing for the respondents further submitted that the petitioner was not selected along with regular batch candidates of 1997-98 batch, since he was appointed as Sub-Inspector of Police Taluk in the year 2010, his next promotion as Inspector of Police will be considered according to the seniority from the date of appointment in the post Sub Inspector of Police i.e from the year 2010 and not with the regularly selected candidates of 1997-98 batch.

10. After completion of arguments of both sides, the case was again posted for clarification on 28.02.2020. The learned counsel for the petitioner has produced before this Court a copy of Memorandum in Rc.No. 257256/Rect 1(2)/2019 dated 05.01.2020 issued by the Office of the Director General of Police, Chennai, wherein directions have been issued to the concerned Superintendent of Police to fix seniority of some of police officers, on par with their batch mates as per Rule 24(d) of Special Rules of TNPSS. In the said Memorandum, cases of (i) R.Prabhakaran, (ii).E.Giri, (iii).K.Ezhilkumar Police Constables, and S.Sakthivel, HC whose promotions were initially rejected due to medically unfit, were considered and their seniority was also fixed at the appropriate place after satisfying their medical fitness in the second medical examination by relying upon Rule 24 (d) of TNPSS. The relevant Rules also extracted in the said Memorandum in paragraph 5, which reads as follows;

"5.The Rule 24 (d) of TNPSS is extracted below:-

The seniority of Police Constables who are appointed on or after 01.07.1977 according to rule of reservation shall be determined with reference to the marks obtained by them in the final examination conducted at the Recruits Schools. In the case of those who secured same marks, seniority shall be decided with reference to their date of birth (Added in G.O. Ms.No. 843/Home (Pol.VIII) Dated 31.03.1987)"

11. It is the contention of the learned counsel for the petitioner that since the similar issue has been considered and orders also issued favourably in the aforesaid Memorandum, the writ petitioner herein is also entitled to get benefits on par with his batch mates, therefore sought for direction to the respondents to grant benefits in the light of the aforesaid memorandum issued by the Director General of Police.

12. Considering the submissions made by both sides and in view of the copy of Memorandum in Rc.No. 257256/Rect 1(2)/2019 dated 05.01.2020 issued by the Office of the Director General of Police, Chennai, this Court without expressing any opinion, directs the respondents to consider the petitioner's representation dated 19.08.2013 and pass orders on merits, in accordance with law within a period of twelve (12) weeks from the date of receipt of a copy of this order.

13. With the above directions, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Director General of Police (Law & Order)
Dr.Radhakrishnan Road,
Mylapore, Chennai-600004.
2. The Director General of Police,
TNUSRB (Tamilnadu Uniformed Services
Recruitment Board),
Chennai - 600002.

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W.P.No.11798 of 2014

RSV(CO)

CS/17/07/2020

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