



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **06.02.2020**

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.16175 of 2012

and

M.P. (MD) .Nos.1 and 2 of 2012

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P.Karuppiah

... Petitioner

Vs.

1.The Secretary to Government,
Department of Industries and Commerce,
Secretariat,
Chennai - 600 009.

2.The Industries Commissioner and Director
of Industries and Commerce,
Mandavelipakkam,
Raja Annamalaipuram,
Chennai - 600 028.

3.The Joint Director (Electrical & Electronics),
Office of the Industries Commissioner and
Director of Industries and Commerce,
Mandavelipakkam,
Raja Annamalaipuram,
Chennai - 600 028.

4.S.Chokkalingam

5.M.Punniakodi

6.C.Selvam

7.D.N.Uma

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to G.O. (4D).No.17, Micro Small and Medium Enterprises (E1.1) Department, dated 29.05.2012 issued by the 1st respondent and quash the same and consequently direct the respondents 1 to 3 to promote the petitioner to the cadre of Deputy Director of Industries and Commerce with effect from 01.08.2001 and place the petitioner over and above the petitioner's junior viz., the 4th respondent herein and grant all service and monetary benefits.

For petitioner : Mr.A.Thirumurthy

For respondents 1 to 3 : Mr.S.Dhayalan,
Government Advocate

For respondents 4 to 7 : No appearance



ORDER

This writ petition has been filed by the petitioner challenging the order passing over the name of the petitioner from the Panel for promotion to the post of Deputy Director of Industries stating that there is currency of punishment.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as Tester on 01.10.1984 and promoted as Assistant Director of Industries and Commerce on 01.08.1998. As per G.O.Ms.No.2 Small Industries Estt.(1) Department, dated 20.01.1997, an Assistant Director having B.E. Qualification and three years of service as Assistant Director or Diploma Qualification with five years of service as Assistant Director, is eligible for promotion to the post of Deputy Director of Industries and Commerce. The petitioner became eligible to be promoted to the post of Deputy Director as early as on 01.08.2001. But, the petitioner was not given promotion till June, 2006, though there was no punishment or charge pending against him. While so, based on 17 (b) charge memo dated 24.06.2006, a punishment order was passed on 22.04.2009 imposing punishment of stoppage of two increments without cumulative effect and the punishment was under currency from 01.10.2009 to 30.09.2011. Based on the charge memo dated 20.07.2007, the minor punishment of stoppage of increment for six months without cumulative effect was imposed on the petitioner on 31.12.2009 and the said punishment was also on currency from 01.10.2011 to 31.03.2012. Thus, the punishment was expired on 31.03.2012.

3. While so, by the impugned order dated 29.05.2012, the first respondent has passed over the promotion of the petitioner stating that there is a currency of punishment till 31.03.2012 and the petitioner is not qualified as on crucial date of 01.05.2011 and accordingly promoted the respondents 4 to 7 who are juniors to the petitioner, as Deputy Director of Industries and Commerce, and on the same day, the first respondent issued promotion order to the petitioner. The learned counsel for the petitioner submitted that though the petitioner qualified to be promoted to the post of Deputy Director as early as on 01.08.2001, he had not been considered for promotion till June, 2006 without any reason. The crucial date for preparation of panel for the year 2011-12 was 15.04.2011 and the said panel was valid for one year only. The panel was prepared on 15.04.2011 and the one year period expired on 14.04.2012. Therefore, the preparation of a panel for the year 2011-2012 on 29.05.2012 ie. after reaching the crucial date for the year 2012-2013, that is on or after 15.04.2012, is without any basis and illegal. Hence, the impugned order may be set aside. He would further submit that as the petitioner is qualified to be promoted from 01.08.2001, he may be promoted at least from the date of expiry of currency of punishment.



4. The learned Government Advocate appearing for the official respondents submitted that though the petitioner has attained the service qualification as on 01.08.2001, he has not reached the zone of consideration for promotion to the post of Deputy Director for the panel 2001-2002 and his seniority reached the zone of consideration only during the panel year 2005-06. The Government have approved nil panels for the years 2002-03, 2003-04 and 2004-05. Since the charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, were framed against the petitioner, his name was deferred in the panels 2005-06, 2006-07 and 2007-08. The Government have approved nil panel for the year 2008-09. Due to pendency of charges as on crucial date 15.04.2009, he was not included in the panel for the year 2009-10 and his immediate junior by name S.Chokkalingam / 4th respondent herein was given promotion. The Government have approved 'nil' panel to the post of Deputy Director during the year 2010-11. Due to currency of punishment as on 15.04.2011, he was included in the panel for the year 2011-2012 and the respondents 5 to 7 were promoted by relaxing the service conditions. However, on 18.03.2013, the petitioner was promoted as Deputy Director / Administrative Officer. Therefore, this writ petition may be dismissed.

5. Heard the learned counsel for both sides and perused the records carefully.

6. Admittedly, it is not in dispute that the petitioner has attained the qualification for inclusion in the panel for promotion to the post of Deputy Director as early as on 01.08.2001. However, he has not been considered for promotion till June, 2006 for the reasons best known to the respondents. During that period if the name of the petitioner has been included in the panel, he would have got promotion long back. Thereafter, showing the pendency of the charges and also currency of punishment, he has not been promoted till 31.03.2012. According to the official respondents, the petitioner was not eligible to be promoted as on 15.04.2011 in the panel for promotion for the year 2011-12. But, one year period lapsed as early as on 14.04.2012. The currency of punishment expired on 31.03.2012 itself. But, by the impugned order dated 25.04.2012, ie., after the completion of currency of punishment period, the official respondents have passed over the name of the petitioner from the panel for promotion showing the currency of punishment and on the same day, promoted the juniors to the petitioners by relaxing their qualification.

7. In the case of the **Deputy Inspector General of Police, Thanjavur Range Vs. Rani**, reported in **2011(3) CTC 129**, a Full Bench of this Court has held that 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 of



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

8. Considering the fact that the petitioner is eligible for promotion as early as on 01.08.2001 and also considering the fact that he has not been considered for promotion till June, 2006 and that most of the juniors to the petitioner were promoted only by relaxing their qualifications and for the reason that pendency of charges and currency of punishment period, he has not been promoted for these long years, the official respondents could have included the name of the petitioner in the panel for promotion for the year 2011-12 itself or they could have promoted the petitioner immediately after completion of currency period ie., after 31.03.2012. But, they promoted the petitioner only on 18.03.2013 to the post of Deputy Director. At least, the official respondents could have promoted the petitioner retrospectively from 31.03.2012. But, they have not done so. Hence, this Court is inclined to direct the official respondents to notionally promote the petitioner from the next date of expiry of currency period ie., from 01.04.2012 and give service and monetary benefits. Now, the petitioner retired from service and hence, no prejudice would be caused the respondents 4 to 7.

9. In view of the above, this Court directs the respondents 1 to 3 to notionally promote the petitioner from the next date of expiry of punishment period ie., from 01.04.2012 and to give service and monetary benefits to the petitioner in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

10. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (crl.side)

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/ /2020

Sub Assistant Registrar(CS)

gcb

To

1.The Secretary to Government,
Department of Industries and Commerce,
Secretariat,
Chennai - 600 009.



2.The Industries Commissioner and Director
of Industries and Commerce,
Mandavelipakkam,
Raja Annamalaipuram,
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3.The Joint Director (Electrical & Electronics),
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+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-5180[F] dated 07/02/2020)
+1 CC to M/s.SPL GP (SR-5222[F] dated 07/02/2020)

Order made in
W.P (MD) No.16175 of 2012
06.02.2020

MK (29.05.2020) 5P 6C