

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.17280 of 2007

V.Sivakumar

... Petitioner

-Vs-

1.Government of Tamil Nadu rep.by
Secretary to Government,
Environment and Forests Department
Fort St.George, Chennai - 600 009.

2.The Principal Chief Conservator of Forests
Chennai 600 015.

3.S.Murugan

4.M.A.Mohamed Ali

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent relating to (1) Proc.Ref. No.S1/48737/2001-6 dated 2/1/2002 (2) Proc. Ref.No S1/48737/2001-12 dated 27/3/002 and (3) Proc.No.S1/57630/2002-03 dated 21.4.2003 quash the orders dated 2/1/2002 and 27/3/2002 in so far as it relates to the applicant and the order dated 21/4/2003 in so far as it relates to applicant and the order dated 21/04/2003 in so far as relates to non-inclusion of name of the applicant and inclusion of the names of respondents 3 and 4 issue consequential directions to promote the Applicant as Draughting Officer by virtue of inclusion of his name in the panel for 2001-2002 with 2002-2003 at Sl.No.1 above the name of the 3rd Respondent and promote his as Draughting Officer.

For Petitioners :Mr.M.Ravi

For Respondents :Mr.S.Prabhu

Additional Government Pleader (Forests)
for RR 1 and 2

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent relating to (1) Proc.Ref. No.S1/48737/2001-6 dated

2/1/2002 (2) Proc. Ref.No S1/48737/2001-12 dated 27/3/002 and (3) Proc.No.S1/57630/2002- 03 dated 21.4.2003 quash the orders dated 2/1/2002 and 27/3/2002 in so far as it relates to the applicant and the order dated 21/4/2003 in so far as it relates to applicant and the order dated 21/04/2003 in so far as relates to non-inclusion of name of the applicant and inclusion of the names of respondents 3 and 4.

2. This petition in fact was originally filed before the Tamil Nadu Administrative Tribunal as O.A.No.1861 of 2003 and was subsequently transferred to this Court and renumbered as W.P.No.17280 of 2007.

3. The petitioner was working as Junior Draughting Officer at the respondent Department. Accordingly he claimed that, he would be fit for promotion to the post of Draughting Officer in the panel for the year 2001-02. In this context, a panel of Junior Draughting Officers fit for promotion was prepared by the second respondent in the year 2001-02, by taking the crucial date as 15.06.2001, where there were 16 candidates included, wherein the name of the petitioner stood at Sl.No.16. Thereupon, the second respondent, vide proceedings dated 02.01.2002, approved the panel for the year 2001-02 for promotion of Junior Draughting Officer as Draughting Officers on regular basis in the Tamil Nadu Forest Subordinate Services.

4. Eight names were included in the said panel and the name of the petitioner stood in Sl.No.8. However, in the "Result of Selection" column, it has been mentioned as "Not considered due to want of vacancy".

5. In this context, it is the further case of the petitioner that, though eight names including the name of the petitioner had been placed in the approved list of panel for the purpose of promotion to the Post of Draughting Officer, since there were only six vacancies at that time ie., in the year 2001-02, the name of the petitioner could not be included in the approved panel and that is why the reason "not considered due to want of vacancy" was shown.

6. Subsequently, one of the persons among the six persons, who had been selected for promotion and whose name found place in the approved panel list, since had relinquished his promotion and by virtue of that, a vacancy arose among the six vacancies, for which the approved panel was prepared, the petitioner made a representation to the respondents to include his name in the approved panel, as one vacancy arose due to one person had relinquished his promotion.

7. However, the said request was not considered or turned down by the respondents, by giving a reply to the petitioner, stating that the name of the petitioner cannot be subsequently included in the approved panel and if at all the petitioner's name has to be included, his candidature would be considered

for the next year panel ie., in the year 2002-03.

8. In this context, it is the actual grievance of the petitioner as has been projected in this case, especially in ground (g) of the Original Application is that, the second respondent issued the approved panel of Draughting Officer for the year 2002-03 vide his proceedings dated 21.04.2003, wherein also, to the shock and dismay of the petitioner, his name was not found, whereas the name of the third and fourth respondents who were not at all considered in the earlier panel for the year 2001-02 along with the petitioner, were found place in the year 2002-03 approved panel of Draughting Officer.

9. Therefore, aggrieved over the non inclusion of the petitioner's name at least in the year 2002-03 approved panel for Draughting Officer, the petitioner has approached this Court by seeking the aforesaid prayer.

10. Heard Mr.Ravi, learned counsel for the petitioner, who would submit that, even for the year 2001-02, the petitioner was eligible to be considered and accordingly his name was included in the panel. Though his name found place at Sl.No.8 in the approved panel, he was not considered for promotion to the post of Draughting Officer for want of vacancy, as according to the respondents, there were only six vacancies available at that time.

11. However, in the subsequent year also, ie., in the year 2002-03, the name of the petitioner has not been included in the approved panel. Instead, the names of third and fourth respondents, who were juniors to the petitioner and who were never been considered along with the petitioner in the earlier panel, were included. Therefore, the petitioner's counsel would submit that, this Court shall show its indulgence by giving a direction to the respondent to at least include the name of the petitioner in the approved panel for the post of Draughting Officer for the year 2002-03 and accordingly such promotion notionally should be directed to be given by the respondents with pay benefits and consequential other monetary benefits should be directed to be given.

12. However, on the other hand, Mr.Prabhu, learned Additional Government Pleader appearing for the respondents, by relying upon the reply affidavit filed in this regard, contended that, no doubt in the year 2001-02 his name was included in the panel and though eight persons found place in the list, where the petitioner's name was at Sl.No.8, as there were only six vacancies available during the relevant year, his name being in Sl.No.8 was not considered and that reason has been specifically stated.

13. Subsequently, the petitioner made a request through a representation that, one person amongst the six persons since

has relinquished his promotion, in his place the petitioner's name can be included. The said request had been turned down by the respondents stating that, once the approved panel is operative, the name of the petitioner cannot be considered, however, his name certainly would be considered in the next year panel. In the next year panel also, in the approved list of Draughting Officer, the name of the petitioner could not be considered for various reasons. Learned Additional Government Pleader would submit that, the non-inclusion of the petitioner's name in the panel for the years 2001-02 and 2002-03 is for specific reasons and therefore, the same cannot be found fault with and accordingly, the impugned orders are sustainable and therefore the writ petition is liable to be rejected, he contended.

14. Learned Additional Government Pleader further contended that, none of the juniors of the petitioner had been given promotion and therefore petitioner may not have any grievance for non inclusion of his name in the 2002-03 year panel also.

15. As has been rightly pointed out by the learned counsel for the petitioner, no doubt in the year 2001-02 panel itself, the name of the petitioner was included and his name found place at Sl.No.8. However, his name was not selected for want of vacancy, as according to the respondents, there were only six vacancies available at that time.

16. Even though subsequently one of the selected candidate for the promotion relinquished his promotion and in whose place, the petitioner made a request to include his name, that was turned down. While turning down the request to include the petitioner's name in the 2001-02 panel itself, in the vacancy caused due to the relinquishment of promotion by one of the selected candidate, the reply given by the respondents was that, certainly his name would be included for consideration in the panel for promotion in the next year ie., 2002-03.

17. However, in the 2002-03 panel dated 24.01.2003 also, the name of the petitioner was not found. This, according to the petitioner is an injustice to him, as he was senior to third and fourth respondents, whose name were included in the 2002-03 panel and the petitioner's name was omitted to be included, for which, even according to the respondents, through the reply was submitted before this Court, no plausible reason had been given and in this regard, even though attempt has been made by the learned Additional Government Pleader appearing for the respondents to sustain the action on the part of the respondents as well as the orders which are impugned herein, this Court finds no plausible reasons from the respondents to deny the name of the petitioner to be included in the approved panel for the post of Draughting Officer for the year 2002-03.

18. Therefore, this Court has no hesitation to hold that, such non-inclusion on the part of the respondents to include the name of the petitioner at least in the year 2002-03 panel is not justified. Therefore, the petitioner would be entitled to get included in the 2002-03 approved panel for promotion and accordingly he shall be considered to be given promotion to the post of Draughting Officer from the date, where the juniors to him, who had been included in the panel had been given promotion.

19. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

20. That the respondents are hereby directed to include the name of the petitioner in the approved panel for promotion to the post of Draughting Officer for the year 2002-03 as per his seniority and consequently necessary promotion to the post of Draughting Officer notionally shall be conferred on the petitioner and such notional promotion shall be taken into account for all benefits with regard to the continuity of service, however without backwages. Accordingly, the other benefits, as a sequel to the said notional promotion, shall also be conferred on the petitioner and the needful as indicated above, shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

21. With the above directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

सत्यमेव जयते
Sub Assistant Registrar

KST

To

1. Secretary to Government,
Environment and Forests Department
Fort St. George, Chennai - 600 009.

2. The Principal Chief Conservator of Forests
Chennai 600 015.

+1cc to Government Pleader SR.No.16489

W.P.No.17280 of 2007

PMK (CO)

<https://hcservices.courts.gov.in/hcservices/>
GMI (30/06/2021)