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IN THE HIGH COURT OF JUDICATURE AT MADRAS

|                         |            |
|-------------------------|------------|
| Orders reserved<br>on : | 29.10.2021 |
| Orders Pronounced on:   | 15.11.2021 |

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.15644 & 15657 of 2021  
and  
W.M.P.Nos.16553 & 16558 of 2021

(Through Video Conferencing)

- |                |                                           |
|----------------|-------------------------------------------|
| 1. B.Nagarajan | ... Petitioner in<br>W.P.No.15644 of 2021 |
| 2. M.Ayyasamy  | ... Petitioner in<br>W.P.No.15657 of 2021 |

Vs.

- 1.The State of Tamil Nadu,  
Represented by its Secretary to Government,  
Forest and Environment Department,  
Fort St. George, Chennai - 600 009.
- 2.The Principal Chief Conservator of Forest,  
Head of Forest Force,  
No.1, Jennis Road,  
Panagal Building,  
Saidapet, Chennai - 600 015
- 3.The Chief Conservator of Forest,  
Anaimalai Tiger Reserve,  
Anaimalai,  
Tirupur District

... Respondents in both WPs

Common Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the entire records which culminated of the promotion panel by the second respondent for the panel years 2016-2017, 2017-2018 and 2018-2019 drawn on 12.10.2020, 12.01.2021 and 13.01.2021 respectively, set aside the same in so far as it relates to the petitioner's non-selection and consequently direct the respondents to confer promotion to the petitioner to the post of Forester with all consequential service and monetary benefits.



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For Petitioner : Mr.S.Mani  
(in both W.Ps)

For Respondents: Mr.L.S.M.Hasan Fizal  
(in both W.Ps) Government Advocate

C O M M O N O R D E R

By this common order, both the writ petitions are being disposed. Both the petitioners have prayed for an identical relief which reads as under:

"The petitioners have filed these writ petitions for the issuance of a Writ of Certiorarified Mandamus to call for the entire records which culminated of the promotion panel prepared by the second respondent for the panel years 2016-2017, 2017-2018 and 2018-2019 drawn on 12.10.2020, 12.01.2021 and 13.01.2021 respectively and set aside the same in so far as it relates to the petitioner's non-selection and to consequently direct the respondents to confer promotion to the petitioner to the post of Forester with all consequential service and monetary benefits."

The question is whether the petitioners suffer from any disqualification after the currency of punishment on 31.07.2021.

2. Both the petitioners are members of the Forest Department within the jurisdiction of the second and third respondents herein. The petitioner in W. P.No.15644 of 2021 was promoted as a Forest Guard in the year 2004. The petitioner in W.P.No.15657 of 2021 joined the services of the Forest Department as a "Forest-Guard cum Driver" in the year 2008.

3. The next avenue of promotion for both the petitioners is to the post of "Foresters". Both the petitioners were issued with the Charge Memos dated 21.09.2018 under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. The Deputy Director of Anaimalai Tiger Reserve Forest punished the petitioners in the disciplinary proceedings vide order dated 28.01.2019 with stoppage of increment for a period of three years each without cumulative effect.

4. Under these circumstances, the respective petitioners preferred an appeal before the Chief Conservator of Forest, the third respondent herein.

5. By a common order dated 18.05.2019, the third respondent as the Appellate Authority reduced the punishment to a stoppage of increment for a period of six months without cumulative effect.



6. It is the case of the respective petitioners that the effect of modified punishment came to an end on 31.07.2019 i.e., six months from the order dated 28.01.2019 of the Disciplinary Authority, namely the Deputy Director of Anaimalai Tiger Reserve Forest in view of the order 18.05.2019 of the Appellate Authority, the third respondent herein.

7. It is therefore submitted that since the punishment was not in currency after 31.07.2019, the second respondent, after including the name of the petitioners for the promotion to the post of "Forester" for the panel year 2016- 2017 on 12.10.2020 wrongly decided not to include the names of the petitioners as "Foresters".

8. It is submitted that the names of the petitioners in the respective writ petitions were at Serial Nos. 83 and 193 in the panel for the promotion for the Panel Year 2016 - 2017 but in the column for "RESULT OF THE SELECTION" their name declared as "Not selected."

9. It is submitted that once again when the panel for the panel year 2017-2018 was drawn on 12.01.2021, the names of the respective petitioners were at Serial Nos.46 and 65 respectively. Again, the names of the respective petitioners were withheld for the same reason.

10. The learned counsel for the petitioners submits that again in the panel for promotion for the panel year 2018-2019 was drawn on 13.01.2021, the names of the respective petitioners were at Serial Nos. 45 and 57. It is submitted that the names of the petitioners were once again withheld for the same reason.

11. It is submitted that mere because Charge Memos were issued on 21.09.2018 under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and therefore there was no justification in not approving the name of the petitioners for promoting them as "Foresters" in the panel for promotion during the year 2016-2017.

12. In this connection, a reference was made to Rule 4(a) (iii) of the Tamil Nadu State and Subordinate Service Rules as per which initiation of disciplinary proceedings under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules will not operate as a bar for promotion.

13. It is further submitted that the crucial date for preparing panel for promotions on 15<sup>th</sup> of August of every panel year and since the modified punishment came to an end on 31.08.2019, before the panels for promotion for the respective panel years were prepared on 12.10.2020, 12.01.2021 and 13.01.2021 respectively, the petitioners name should have been approved for being promoted.



14. It is further submitted that as per Rule 4(b)(i) of the Tamil Nadu State and Subordinate Service Rules, even if, the punishment has been awarded within the check period of 5 years prior to the crucial date and the punishment was in currency as on the date of the crucial date there is no bar for promoting the petitioner.

15. It is further submitted that even under Rule 4(c)(i) of the Tamil Nadu State and Subordinate Service Rules, if a member of the service, whose name has been included in the approved list on account of the punishment, promotion shall not be deferred in the subsequent years list for the same punishment, provided such member is not undergoing any punishment on the crucial date of preparation of the approved list.

16. It is further submitted that as per Rule 4(c)(ii) of the Tamil Nadu State and Subordinate Service Rules, if any punishment is imposed on a member of service under Rule 8 of the Tamil Nadu Civil Services (Discipline And Appeal) Rules, it shall take effect from the date on which such punishment is served on the member of the service concerned and the name shall be considered for inclusion in the approved list until the said punishment is over.

17. It is further submitted that even if check period started from the date on which the crucial date for consideration of promotion is taken for the panel year 2016-2017, the crucial date is 15.08.2016. The check period of five years for the panel year 2016-2017 will be from 16.08.2012.

18. For the panel year 2017-2018, the crucial date is 15.08.2017. The check period commences on 16.08.2012 (preceding five year). For the panel year 2018-2019, the crucial date for consideration is 15.08.2018 and the check period of five years commences on 16.08.2013.

19. It is submitted that the Charge Memo under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued to the petitioner on 21.09.2018. So as on the crucial date for the panel years 2016-2017, 2017-2018 and 2018-2019, there was no bar for promotion of the petitioner for including his name and to confer promotion to him.

20. It is submitted that the second respondent without application of mind has approved the names of the petitioners in the panel against as "not selected". It is further submitted that the second respondent has not considered the above legal aspects while deferring the name of the petitioner from conferring promotion.



21. Appearing on behalf of the petitioners the learned counsel for the petitioners has also drawn attention to Part 2 of the Tamil Nadu State and Subordinate Service Rules. In particular a reference was made to the aforesaid Rule which reads as under:-

"(b) Punishment within the check period:- (i) If the punishment has been awarded within the check period of five years prior to the crucial date and in currency on the crucial date/date of consideration for actual promotion even though the irregularities fall beyond the five years, it should be held against the office and his name should not be included.

(C) Punishment not in currency but the same was taken into account in earlier panel:- (i) A member of service whose name has not been included in the approved list for a punishment shall not be overlooked in the subsequent years' list for the same punishments provided the member of service is not undergoing any punishment on the crucial date for preparation of approved list."

22. The learned counsel for the petitioners has relied on the following decisions of this court :-

i) The Deputy Inspector General of Police, Thanjavur Range and another vs. V.Rani, 2011 (3) CTC 129;

ii) G.Thangam Ambrose vs. 1. The Government of Tamilnadu Rep.by its Secretary, Rural Development Department, Chennai 600 009 and two others, W.P.No.48782 of 2006;

iii) P.Karuppasamy vs. 1. The Principal, Secretary to Government, Secretariat, Revenue Department, Chennai 600 009 and 3 Others, W.P. (MD) Nos.835 and 2099 of 2013

23. Appearing on behalf of the respondents, the learned Government Advocate submits that since the punishment came to an end on 31.08.2019, the petitioners will be entitled to promotion only in the next panel on 2021 and not before. He therefore submits that these writ petitions are liable to be dismissed.

24. I have considered the arguments advanced on behalf of the petitioners and the respondents. The Facts are not in dispute. The panel for the promotion pertains to the year 2016-2017, 2017-2018 and 2018-2019. The crucial date for each



of these years were 15<sup>th</sup> August of each of the years.

25. In the present case, the Charge Memos were issued on 21.09.2018 under Rule 17(a) of the Tamil Nadu Civil Service (Discipline and Appeal), Rules. The Charge Memos were issued during 2018 - 2019 after the crucial date for preparing panel promotion for 2018 - 2019 expired on 15.08.2018.

26. As clause 12 of the IX Schedule, Part II of the said Act, a member of the whose name has not been included in the approved list for a punishment shall not be overlooked in the subsequent years not for the same punishment or punishments, provided a member of service is not undergoing any punishment on the crucial date for preparation of approved list.

27. As per clause 17 of the IX Schedule, Part II of the said Act Punishment under Rule 8 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules shall take effect from the date on which the punishment orders reserved and the name of such member of service shall not be considered for inclusion in the approved list until his said punishment is over.

28. Sub clause (13) of XI Schedule, Part-A-II Act, reads as under:

"If a member of service is imposed with punishment for irregularities or delinquencies that were committed five years prior to the crucial date, his name shall be considered for promotion or appointment to a post, if the member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion."

29. As per Sub clause (15) XI Schedule, Part-A-II of the Act, No, member of service shall be appointed to post, if the member is undergoing any punishment imposed under Rule 8 of the Tamil Nadu Civil Service (Discipline and Appeal) Rule, either on the crucial date or on the date of consideration for actual promotion. Since the respective petitioners were undergoing any punishment either on the crucial day or on the date of consideration for actual promotion, the denial of promotion cannot be justified under statutory scheme in of the aforesaid Act, as the check period for the petitioners got over much prior to the date when the panels were prepared for promotion. Rejection in the approved list of persons in all the three panels is not justified.

30. A Common Charge Memo was issued to the respective petitioners on 21.09.2018 under Rule 17(a) of the Tamil Nadu Government Civil Services (Discipline and Appeal) Rules after the crucial date for preparing the panel year for 2018 - 2019



expired. A punishment was imposed on the petitioner on 28.01.2019 which was modified by the Appellate Authority to stoppage of increment for six months without cumulative effect vide order dated 18.05.2019.

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31. The currency of punishment thus came to an end on 31.08.2019 ie., from 28.01.2019 to 31.07.2019 in view of order of the third respondent dated 18.05.2019 as an Appellate Authority.

32. The panels of promotions for these three panel years were prepared long after the petitioners were imposed with the punishment vide order dated 28.01.2019. It is only after the crucial date for promotion for the panel year 2018-2019, the petitioners were issued with a Charge Memo on 21.09.2018.

33. The punishment imposed by the original authority was subsequently modified by the third respondent as an Appellate Authority vide order dated 18.05.2019. In view of the above, the punishment came to an end on 31.08.2019.

34. For the sake of clarity following chart may be referred:

| Sl<br>.N<br>o. | Panel Year                                    | Crucial<br>Date | Check Period              | Panel<br>Date  |
|----------------|-----------------------------------------------|-----------------|---------------------------|----------------|
|                | Period of Punishment 29.01.2019 to 31.07.2019 |                 |                           |                |
| 1              | 2016-17                                       | 15.08.2016      | 16.08.2011-<br>15.08.2016 | 12.10.202<br>0 |
| 2              | 2017-18                                       | 15.08.2017      | 16.08.2012-<br>15.08.2017 | 12.01.202<br>0 |
| 3              | 2018-19                                       | 15.08.2018      | 16.08.2013-<br>15.08.2018 | 13.01.202<br>0 |

35. Thus, the question to be answered is whether the second respondent was justified in not approving the names of the petitioner for promotion in the respective panel years for promotion to the post of Forester.

36. If the panel was prepared in time for any of the panel years, the petitioner would have also been promoted as "Foresters", as the promoting authority would have been unaware of the alleged shenanigans of the petitioners in absence of any disciplinary proceedings.

37. Under clause 4 to II to Part-A of the Schedule-XI of the Tamil Nadu Government Servants (Conditions of Service), Act, 2016, there is no bar for including the names of the respective petitioners in the respective panel years as they were issued only with a Chage Memo under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. The names of the petitioners were also included in the panel.



38. As per proviso to section 7 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the list of Candidates for appointment by promotion and recruitment by transfer to all the categories of posts in the State and Subordinate Services shall be prepared annually against the estimated number of vacancies expected to arise during the course of a year.

39. The estimate is to be prepared, taking into account the total number of permanent posts in a category, number of temporary post in existence, the anticipated sanction of new post in the next year, requirement posts of leave reserves, the anticipated sanction of new post next year, the recruitment we sanction, etcetera.

40. The list of approved candidates shall be in force for a period of only one year. The candidates whose names were included in the previous list, who were not appointed, shall be considered, if eligible, for inclusion in the next year, along with the seniors, if any, whose names were not included in the previous list, either because they are found not suitable, or because they did not technically qualify when the previous list was drawn.

41. Sub clause (4) to Section 7 of the Act also makes it clear that inclusion of candidates name in any list of approved candidates does not confer any claim for appointment to the class or category in that class.

42. As per the Provision, promotion can be denied if punishment was awarded during the check period of 5 years prior to the crucial and during currency of the punishment on the date for consideration of their name for inclusion or actual promotion. It is to be held against such government servant and his name shall not be included.

43. In Union Of India And Others vs K. Krishnan 1992 Supp (3) SCC 50, it was observed as follows:-

"5. It has been stated by the learned Counsel for the parties that except for the above punishment, the respondent is fit for promotion and that the currency of the penalty will expire on 14-9-1990. In that view he may be promoted immediately thereafter with effect from 15-9-1990, provided he is not otherwise disqualified for promotion by incurring some other disqualification. The appeal is accordingly allowed but without costs."

44. In Subramanian v. Government of Tamil Nadu, rep. by its Secretary, Chennai and Others, (2008)5 MLJ 350 (cited supra), this Court has held as follows:

"(i) When the employee is imposed upon a punishment of stoppage of increment for two



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years without cumulative effect which could be construed only as a minor punishment, he could not be denied further promotion solely based on the same, if he is otherwise fit for promotion.

(ii) A reading of the said judgments would show that based on the imposition of minor punishment, promotion cannot be denied, if he is otherwise fit for promotion.

(iii) Further, I find that in the said cases there was a punishment of stoppage of increment and in the present case, the punishment of Censure was imposed. Following the dictum laid down in the said decisions, I am of the view that since the allegations levelled against the petitioner were not serious in nature, particularly the proved charges were only minor in nature, the claim of the petitioner can be considered by the 1st respondent on par with his juniors and as such, the second prayer sought for by the petitioner is allowed."

45. On a reference, a Full Bench of this Court in The Deputy Inspector General of Police, Thanjavur Range and another Vs. V.Rani2011 (3) CTC129 considered a circular of the Government and conflicting views of the Court and answered as under:

"28. Therefore, after analysis of the entire law on the subject, we answer the reference as follows:

(i) 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 that he is otherwise fit for promotion and to that extent, the finding of the Division Bench in Subramanian Vs. Government of Tamil Nadu, rep. By its Secretary, Chennai and others, 2008 (5) MLJ 350, stands overruled. It is needless to state that after the currency of punishment order, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible.

(ii) If any benefit has been conferred on the party to the judgment rendered by the Division Bench in Subramanian Vs. Government of Tamil Nadu, rep. By its Secretary, Chennai and others, 2008 (5) MLJ 350, the same shall not be affected by the judgment of this Bench



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since there is a factual finding in that case that there was a technical lapse committed by the delinquent and no financial loss caused.

(iii) The detailed instructions issued by the Government in G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993 issued by the Chief Secretary to Government by order of the Governor, cannot be equated to the Statutory Rules framed under the proviso to Article 309 of the Constitution of India and it can utmost be Administrative Instructions issued under Article 162 of the Constitution of India. In any event, the said Government Order does not deal with the case of promotion of a Government servant during the currency of punishment.

(iv) The Government Letter No.18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 07.10.2005 with annexures 1 to 7 and the letter No.248 (P & AR) Department, dated 20.10.1997 are not Statutory Rules framed under Proviso Article 309 of the Constitution of India and cannot be read either with the Tamil Nadu Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

(v) Consequently, the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of 'check period' viz, one year in the case of censure and five years in the case other minor punishments is illegal and impermissible under the Statutory Rules."

46. This view was followed by this Court in W.P.No.48782 of 2008, Vide order dated 20.02.2013 G.Thangam Ambrose Vs. The Government of Tamil Nadu, rep. by its Secretary, Rural Development Department and others and in W.P.(MD).No.835 of 2013, Vide order dated 10.04.2013 P.Karuppasamy Vs. The Principal Secretary to Government, Secretariat, Revenue Department, Chennai and others.

47. In The State of Tamil Nadu Vs. K.S.Murugesan, 1995 (3) SCC 273, it was held that withholding of promotion on account of currency of punishment of stoppage of increment was held neither amounted to double jeopardy nor arbitrary exercise of power under the rule.



48. Since the respective petitioners were neither undergoing any punishment either on the crucial day or on the date of consideration for actual promotion, the denial of promotion cannot justified under statutory scheme in of the aforesaid Act, was the check period for the petitioners got over much prior to date when the panels were prepared for promotion. Rejection in the approved list of persons for promotion in all the three panels cannot justified.

49. Therefore, the petitioners have made a case for allowing these petitions. These writ petitions are there for a consequential relief to the petitioners. Consequently, the connected writ miscellaneous petitions are closed. No costs.

Sd/-  
Assistant Registrar(CS VII)

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Sub Assistant Registrar

rgm

To

1.The Secretary to Government,  
The State of Tamil Nadu,  
Forest and Environment Department,  
Fort St. George,  
Chennai - 600 009.

2.The Principal Chief Conservator of Forest,  
Head of Forest Force,  
No.1, Jennis Road,  
Panagal Building,  
Saidapet, Chennai - 600 015

3.The Chief Conservator of Forest,  
Anaimalai Tiger Reserve, Anaimalai,  
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+1 cc to Government Pleader Sr.NO. 58881

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of 2021  
and

W.M.P.Nos.16553 & 16558  
of 2021

JPL(CO)  
A.SK(21.12.2021)