



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.31326 of 2017
and W.M.P.No.34411 of 2017

P.Vasuhi

...Petitioner

Vs

- 1.The Principal Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Secretariat
Chennai 600 009.
- 2.The Commissioner,
Civil Supplies Consumer Protection Department,
Chepauk
Chennai 600 005.
- 3.The Joint Commissioner,
Civil Supplies Consumer Protection Department,
Chepauk,
Chennai 600 005.

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other appropriate Writ, Direction or Order in the nature of Writ, calling for the records relating to the orders in (i) Pro Se.Moo.Aanai No.A1/19411/2015 dated 21.07.2017 of the Second Respondent ii) G.O.(D) No.297, Co-operation Food and Consumer Protection (E2) Department dated 21.12.2016 of the First Respondent iii) Pro Na Ka No.A1/19411/2015 dated 27/10/2016 of the Third Respondent iv) Pro. Nada..No.A3/27601/2014 dated 5.5.2015 of the Second Respondent v) Pro Nada.No.A3/24793/2009 dated 13.10.2014 and vi) Pro Na Ka No.A1/35852/2013 dated 10/07/2014 of the Third Respondent and to quash the same and to issue consequential direction to the Respondents to include the name of the Petitioner in the panel for the year 2014-15 for promotion as Manager and promote her as such and to consequently empanel and promote her as Assistant Commissioner with retrospective effect from the date of promotion of the Petitioner immediate junior and grant her all consequential benefits.



For Petitioner : Mr.M.Ravi
For Respondents : Mr.P.Ganesan
Additional Government Pleader

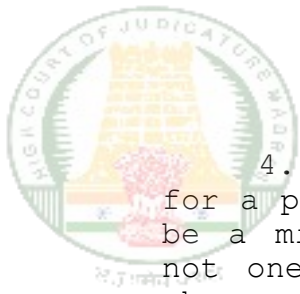
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O R D E R

On 12.9.2009, the 3rd respondent herein had framed charges of negligence against the petitioner under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as the 'Rules'), to which the petitioner had submitted her explanation on 22.10.2009. By adding certain additional facts, a second charge memo, under Rule 17(b) was issued on 29.12.2009. This charge memo also attributed negligence on the part of the petitioner in handling her duties. After enquiry, the charges were held to be proved and the petitioner was called upon to submit her further representation through a memo, dated 31.07.2013, to which, the petitioner herein, had submitted her further representation on 26.08.2013.

2. When the petitioner's further representation, dated 26.08.2013 was under consideration, the Panel for Promotion to the post of Manager, for the year 2014-15, was prepared and the crucial date for such Panel was determined as 15.03.2014. After about a period of one year from the date of further representation made by the petitioner, her request for inclusion of her name in the Panel for Promotion was declined on 10.07.2014 and thereafter, an impugned order of punishment was passed on 13.10.2014, whereby, "Stoppage of increment for a period of 3 months without cumulative effect" was imposed upon the petitioner.

3. Aggrieved by the impugned order of punishment dated 13.10.2014, the petitioner herein filed an Appeal on 16.12.2014 and the same was rejected on 05.05.2015 and final orders came to be passed by the first respondent on 21.12.2016, confirming the order of punishment dated 13.10.2014. Subsequently, the petitioner's further request for inclusion of her name in the Panel for Promotion was rejected by the 2nd respondent on 21.07.2017. Challenging the orders of punishment, as well as the subsequent rejection order of the 2nd respondent dated 21.07.2017, declining the petitioner's claim for empanelment for the year 2014-15 to the post of Manager, the present Writ Petition has been filed.



4. Under Rule 8, the punishment of "Stoppage of increment for a period of 3 months without cumulative effect" is deemed to be a minor punishment. The charges against the petitioner are not one of moral turpitude or corruption or any other serious charge, but, rather the charges relate to dereliction of duties. A perusal of the charges indicate that, even if the charges were to be held as 'proved', the proportionate punishment that could have been imposed on the petitioner, may be a minor punishment. While that being so, the proper recourse would have been to proceed against the petitioner under Rule 17(a) instead of Rule 17(b).

5. Above all, the Disciplinary Authority had not closed the earlier charges framed under Rule 17(a) before choosing to proceed against the petitioner under Rule 17(b), particularly, when the original charge memo dated 12.09.2009 under Rule 17(a) also forms a part of the subsequent charge memo, dated 29.12.2009 under Rule 17(b). These infirmities in the procedure adopted by the Disciplinary Authority may indicate that the entire action itself could be a case of discrimination.

6. There is yet another infirmity in the procedure adopted by the Disciplinary Authority, while concluding the departmental action. On completion of the enquiry, when the charges were held to be proved, the petitioner was called upon to submit her further representation on 31.07.2013. The petitioner had submitted her further representation on 26.08.2013 itself. Thereafter, the further action was inordinately delayed. During the course of this inordinate delay, the Panel for Promotion to the post of Manager for the year 2014-15 came to be drawn and the petitioner's candidature was not considered, apparently for the reason that, the departmental proceedings were pending. Had the Disciplinary Authority considered the petitioner's further representation pursuant to the enquiry report, in a reasonable time, the present punishment imposed may not have been an impediment for her promotion. The dereliction of duty by the Disciplinary Authority in failing to consider the petitioner's further representation in time, has cost the chances of her promotion.

7. Apart from the aforesaid reasons, the action of the respondents in imposing the punishment, as well as rejecting the petitioner's request for Promotion, requires to be interfered with, for violation of the Statutory Regulations. The Tamil Nadu Government Servants (Conditions of Service) Act, 2016 stipulates that, when the departmental action is pending for the charges that relate to an incident that had occurred 5 years prior to the crucial date for inclusion, such pendency would not be an impediment for inclusion of the petitioner's name in the Panel for Promotion. Clause 13 of Part A under Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act,



2016, (hereinafter referred to as the 'Act') stipulates this position in the following manner:-

" 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 such member of service is not undergoing such punishment on the crucial date or on the date of consideration for actual promotion."

8. In the petitioner's case, the charges relates to an incident that had occurred on 12.09.2009 and 09.10.2009 and the crucial date for preparation of the promotional panel was 15.03.2014. Apparently, the incident referred to in the charge sheet, had occurred 5 years prior to the crucial date and in view of the above extracted Clause 13 of the Act, the concerned respondent ought to have considered the petitioner's name for promotion for the post of Manager under the panel for the year 2014-15. In view of this violation, the order of the 2nd respondent dated 21.07.2017 cannot be sustained.

9. Though this Court has found certain procedural violation in the departmental enquiry, the ultimate punishment of " Stoppage of increment for a period of 3 months without cumulative effect" does not seem to be disproportionate to the charges. Moreover, the petitioner's grievance seems to be substantially on the inaction of the respondents in including her name in the Panel for Promotion. If her limited grievance of promotion is addressed, without revisiting the punishment, the ends of justice could be secured.

10. In this background, no interference is required to the original order of punishment dated 13.10.2014 and subsequent confirmation of the order of punishment made on 5.05.2015 by the Appellate Authority and the order of rejection dated 21.12.2016 by the 1st respondent does not require interference. However, the order of the 3rd respondent, dated 10.07.2014 and order of the 2nd respondent, dated 21.07.2017, declining the petitioner's request for empanelment for the year 2014-15 for Promotion, are set aside. Consequently, there shall be a direction to the 3rd respondent to pass appropriate orders, granting promotion to the petitioner for the post of Manager, in the promotional panel for the year 2014-15, from the date of which her immediate junior was granted promotion in that panel. The 3rd respondent shall endeavour to pass such orders for promotion with retrospective effect, atleast within a period of four (04) weeks, from the date of receipt of a copy of this order.



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11. Thus, the Writ Petition stands Partially allowed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar

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To

1.The Principal Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Secretariat
Chennai 600 009.

2.The Commissioner,
Civil Supplies Consumer Protection Department,
Chepauk,
Chennai 600 005.

3.The Joint Commissioner,
Civil Supplies Consumer Protection Department,
Chepauk,
Chennai 600 005.

+lcc to Government Pleader SR. No. 69726

W.P.No.31326 of 2017

NK (CO)

PR (21/01/2022)