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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.11.2020

DELIVERED ON : 09.02.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.19392 of 2014

R.Rengasamy

... Petitioner

Vs.

- 1.The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
represented by its Managing Director,
New Railway Station Road,
Kumbakonam,
Thanjavur District.
- 2.The General Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Trichy Region,
Trichirappalli.
- 3.The Administrator,
The Tamil Nadu State Transport Corporation
Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai,
Chennai - 600 002.
- 4.T.Tamilmani
- 5.P.Mohan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of declaration, declaring that the action of the respondents 1 and 2 in denying the promotion to the post of Checking Inspector to the petitioner with effect from 15.11.2013 ie., the date on which the respondents 4 and 5, his juniors were promoted to the post of Checking Inspector, is illegal and arbitrary and consequently direct the respondents 1 and 2 to



promote him to the post of Checking Inspector with effect from 15.11.2013, to pay all monetary benefits based on the promotion and further direct the respondents 1 to 3 to revise his retirement benefits based on the said promotion.

For petitioner : Mr.C.K.Chandrasekar
for Mr.A.Rahul

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For respondents 1 & 2 : Mr.D.Sivaraman

For 4th respondent : Mr.A.Swaminathan

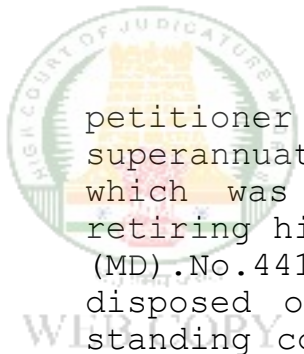
For 3rd respondent : No appearance

ORDER

This writ petition has been filed by the petitioner praying to declare that the action of the respondents 1 and 2 in denying the promotion to the post of Checking Inspector to the petitioner with effect from 15.11.2013 ie., the date on which his juniors/ respondents 4 and 5, were promoted to the post of Checking Inspector, is illegal and to direct the respondents 1 and 2 to promote him to the post of Checking Inspector notionally with effect from 15.11.2013 and to pay monetary benefits.

2. The learned counsel for the petitioner submitted that the petitioner joined in the services of the 1st respondent as Conductor on 12.07.1983 and thereafter, he was promoted as Special Grade Conductor. On 06.10.2012 the petitioner was issued with a charge memo alleging that he absented from duty on the day of strike which was conducted on 20.09.2012 and his absence affected the activity of the Transport Corporation, for which the petitioner has also submitted his reply. On 07.08.2013, the 2nd respondent prepared a seniority list of eligible Special Grade Conductors at Trichy Region from August 2010 to July 2013 for the purpose of granting promotion to the post of Checking Inspector. In the said seniority list, the petitioner was placed at serial No.15 and the respondents 4 and 5 were placed at serial Nos.17 and 20 respectively.

3. The learned counsel for the petitioner would further submit that on 22.10.2013 the 2nd respondent, without conducting any enquiry, passed an order imposing a fine of Rs.200/- for misconduct and thereby, closed the disciplinary proceedings. The fine amount of Rs.200/- was also recovered from the salary of the petitioner in the month of October, 2013 itself. While so, on 15.11.2013, the respondents 1 and 2 promoted the respondents 4 and 5 who were juniors to the petitioner and not promoted the petitioner holding that there was a disciplinary proceeding pending against him. Subsequently, on 09.01.2014 and 15.01.2014 the petitioner was called for certificate verification for promotion, however, the official respondents did not give promotion to the petitioner as they wanted to reopen the disciplinary proceeding, which was closed on 22.10.2013 by imposing a fine of Rs.200/-. Thereafter, the

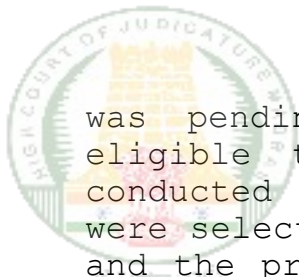


petitioner was retired from service on attaining the age of superannuation on 31.01.2014 subject to the disciplinary proceeding which was reopened. When the petitioner questioned the order retiring him from service subject to disciplinary proceeding in W.P. (MD).No.4415 of 2014, this Court, by order dated 18.06.2014, disposed of the same by recording the submission of the learned standing counsel for the respondents/Transport Corporation that the reopened disciplinary proceeding has been closed, and directing the Corporation to pay all the retireal benefits to the petitioner with interest at the rate of 6% p.a.

4. The learned counsel appearing for the petitioner would next submit that the juniors to the petitioner were promoted to the post of Checking Inspector only on 15.11.2013, but the charge memo was closed as early as on 22.10.2013 imposing a fine of Rs.200/-. As the charge memo has been closed as early as on 22.10.2013 and the imposition of fine of Rs.200/- cannot be considered as a bar to grant promotion, the Transport Corporation ought to have been promoted the petitioner on par with his junior by following the sealed cover procedure contemplated in the decision of the Hon'ble Supreme Court in **Union of India Vs. K.V.Janakiraman and others**, reported in **1991 AIR 2010**. But, the respondents have failed to do so. As the respondents 1 and 2 found that they cannot stall the promotion of the petitioner citing penalty of Rs.200/-, they purposefully reopened already concluded disciplinary proceeding and as such, they denied promotion to the petitioner and after the petitioner's retirement, they themselves closed the reopened disciplinary proceedings. As the reopened disciplinary proceeding was subsequently closed, the petitioner is entitled to claim for notional promotion on par with his junior.

5. The learned counsel appearing for the petitioner would next submit that though the Corporation stated that no one was promoted as Checking Inspector between 15.11.2013 and 31.01.2014 as there was no vacancy, the information obtained under the Right to Information Act, which enclosed at page Nos.40 and 41 of the original typed set of papers, would disclose that between 01.04.2013 and 01.03.2014, about 52 Conductors were promoted as Checking Inspectors and out of them, 13 Conductors were promoted as Checking Inspectors only in the month of February, 2014. Further, the 2nd respondent has admitted in his RTI reply enclosed at page No.45 of the typed set of papers that the promotion to the post of Checking Inspector is being given only based on seniority. Therefore, there is no impediment for the respondents to give notional promotion to the petitioner and to grant consequential service and monetary benefits. Thus, he prayed to allow this writ petition.

6. The learned counsel appearing for the respondents 1 to 3/Transport Corporation submitted that on 17.10.2013, the Corporation conducted an interview for promotion to the post of Checking Inspector and as on that date i.e., as on 17.10.2013, a charge memo



was pending against the petitioner and therefore, he was not eligible to qualify himself as a candidate for the interview conducted for promotion on 17.10.2013. The 4th and 5th respondents were selected in the interview conducted on 17.10.2013 for promotion and the promotion order was issued on 15.11.2013. After closure of the disciplinary proceeding against the petitioner by imposing a fine of Rs.200/- on 22.10.2013, there was no vacancy for the post of Checking Inspector during the period from October 2013 to the date of retirement of the petitioner i.e, till 31.01.2014 and no other person was given promotion to the post of Checking Inspector. Thus, he prayed to dismiss this writ petition.

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

8. Admittedly, in this case, the petitioner was eligible to be promoted to the post of Checking Inspector and in the promotional panel, the petitioner was senior to the respondents 4 and 5. The charge memo dated 06.10.2012 was issued to the petitioner for his participation in one day strike conducted by the Labour Union on 20.09.2012, for which the petitioner was also given his reply. The promotional panel for the post of Checking Inspector was prepared on 07.08.2013. Thereafter, it is stated that on 17.10.2013 the Corporation conducted an interview for promotion as per the panel list, but the petitioner was not permitted to be participated in the interview in view of pendency of charge memo dated 06.10.2012. A Full Bench of the Hon'ble Supreme Court in the decision in **Union of India Vs. K.V.Jankiraman and others**, reported in (1991) 4 SCC 109 had categorically held that a person facing charges should also be considered for promotion and his name should be kept in a sealed cover. As the petitioner was issued only a charge memo, the Transport Corporation ought to have been permitted the petitioner to participate in the interview and kept the result in a sealed cover. But, the Transport Corporation has failed to do so. Having failed to provide reasonable opportunity to the petitioner, now the respondents 1 and 2 cannot deny notional promotion to the petitioner on the ground that the petitioner had not attended the interview.

9. It is seen that after about one year from the date of issuance of charge memo, the 2nd respondent, without conducting any enquiry, passed an order dated 22.10.2013, imposing a fine of Rs.200/- nearly on 27 employees, including the petitioner, for their participation in the strike. It is also seen that the said fine amount has been deducted from the salary of the petitioner in the month of October, 2013 itself. While so, on 15.11.2013 the respondents 1 and 2 promoted the respondents 4 and 5 who are juniors to the petitioner. As the disciplinary proceeding itself has been completed by imposing minor punishment, that too without any enquiry and the said punishment was not a bar for promotion and as there was no disciplinary proceeding was pending against the petitioner as on 15.11.2013, the Transport Corporation ought to have been, in the meantime, considered the case of the petitioner and

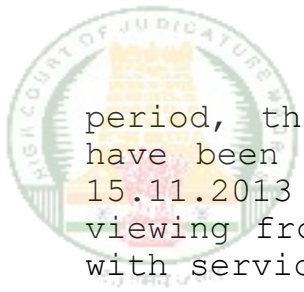


promoted him to the post of Checking Inspector. But, the Transport Corporation has failed to do so.

10. Thereafter also, the petitioner was under the fond hope that he would be promoted as Checking Inspector between 15.11.2013 and 31.01.2014, ie., within the date of his retirement. But, he has not been promoted. In order to justify the same, the Transport Corporation took two different stand. Firstly, the disciplinary proceeding which was closed by imposing a fine of Rs.200/- was reopened and therefore, he was not considered for promotion. Secondly, as there was no vacancy for the post of Checking Inspector between the period 15.11.2013 and 31.01.2014, the case of the petitioner was not considered. According to the petitioner, as he belonged to the different Labour Union and as he was raising voices for good causes, he was victimized and he was not promoted.

11. As stated earlier, by order dated 22.10.2013, the Transport Corporation closed the disciplinary proceedings initiated against 27 employees, including the petitioner, by imposing a fine of Rs.200/- and it was also implemented immediately by deducting the amount from the monthly salary of the petitioner. It is not known as to how and as to why the closed disciplinary proceeding was reopened, that too after giving effect to the punishment. It is also not known as to whether it was reopened only against the petitioner. Any how, on 10.07.2014 the Transport Corporation itself reported before this Court in the earlier Writ Petition filed by the petitioner in W.P.(MD)No.4415 of 2014 that the reopened disciplinary proceeding has already been closed after the retirement of the petitioner. No doubt, the disciplinary proceeding could have been reopened only after setting aside the order imposing the fine of Rs.200/-. The submission of the respondents that subsequently, the reopened disciplinary proceeding was closed shows that the disciplinary proceeding was closed without any punishment abruptly. As there is no punishment at all imposed in the disciplinary proceeding, the petitioner can be restored to his original position and he can be given promotion notionally. Even assuming that the punishment of fine of Rs.200/- imposed on the petitioner was restored, as stated earlier, it is only a minor punishment and as it was imposed without any enquiry, the respondents 1 and 2 could not deny promotion to the petitioner and hence, the petitioner is entitled to notional promotion.

12. According to the Transport Corporation, there was no vacancy for the period between 15.11.2013 to 31.01.2014. The documents produced by the petitioner shows that between 01.04.2013 and 01.03.2014, about 52 conductors were promoted as Checking Inspectors and out of the said 52 Conductors, 13 conductors were promoted as Checking Inspectors only in February, 2014, which shows that there was vacancy in the post of Checking Inspectors and that the respondents 1 and 2 have waited for the petitioner to get



period, this Court has already held that the petitioner ought to have been given promotion by following sealed cover procedure on 15.11.2013 and the Transport Corporation has failed to do so. Thus, viewing from angle, the petitioner is entitle to notional promotion with service and monetary benefits.

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13. In the result, this Writ Petition is allowed and the respondents 1 to 3 are directed to give notional promotion to the petitioner for the post of Checking Inspector with effect from 15.11.2013 and to provide all the service and monetary benefits, including the revised retirement benefits based on the said promotion, within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

Bala

To

- 1.The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
represented by its Managing Director,
New Railway Station Road,
Kumbakonam, Thanjavur District.
- 2.The General Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd., Trichy Region,
Trichirappalli.
- 3.The Administrator,
The Tamil Nadu State Transport Corporation
Pension Fund Trust, Thiruvalluvar House,
Pallavan Salai, Chennai - 600 002.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-4045[F] dated 09/02/2021)

+1 CC to M/s.A.RAHUL, Advocate (SR-4364[F] dated 10/02/2021)

W.P(MD)No.19392 of 2014
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