



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
20.01.2022	7.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.25760 of 2009

Subramanian

... Petitioner

Vs.

The Principal Chief Conservator of
Forests,
Panagal Buildings,
Chennai-15.

...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of respondent in connection with the impugned order passed by him in ABI/26836/2006 dt 18.2.2009 and quash the same and direct the respondent to consider the claim of the petitioner for promotion as Forester for the year 1996 and promote him as Forester and grant him all consequential service and monetary benefits.

For Petitioner :Mr.K.Venkataramani,
Senior Counsel for
Mr.M.Muthappan

For Respondent :Mr.T.Arun Kumar,
A.G.P. (Forest)

O R D E R

According to the petitioner, the petitioner was entered into service on 20.1.1982 as a Forest Guard in the Forest department and the petitioner was promoted as Forester in the year 2001 and thereafter, on revision of seniority, his name was placed in the promotion panel for the year 2000. Though the petitioner had become fully qualified, his name was not included in the panel and no reason communicated to the petitioner for denying promotion to the petitioner, whereas his junior by name



Chandrasekaran who was appointed as Forest Guard on 24.1.1982, was promoted. The claim of the petitioner was overlooked for the panel years 1996, 1997, 1998 and 1999. The petitioner was promoted as Forester in the year 2001 by including his name in the panel of the year 2000.

(i) According to the petitioner, the petitioner was issued with a charge memo under Rule 17(b) of Tamilnadu Civil Services (Discipline & Appeal) Rules by the District Forest Officer, Coimbatore Division on the ground that the petitioner did not report the death of the elephant in his jurisdiction and reported the same only on 15.2.1985. The petitioner submitted a detailed explanation denying the charges and also informed the disciplinary authority that he reported the death of elephant to the higher officials on 15.2.1985 and thereafter, the Range Officer sent his further report that the petitioner may be exonerated from the charges. The District Forest officer did not agree with the explanation submitted by the petitioner and held that the charges against the petitioner is proved and imposed a punishment of stoppage of increment for a period of three years with cumulative effect by an order dated 18.5.1987. The petitioner preferred an appeal to the Conservator of Forest, Coimbatore against the said punishment imposed on him. The Appellate Authority though passed an order on 2.9.1987 confirming the order of the District Forest Officer, it was not communicated to the petitioner. The petitioner submitted a memorandum to the Principal Chief Conservator of Forests, Chennai and by an order dated 24.7.1996 set aside the punishment order of the disciplinary authority and ordered denovo enquiry. After conducting denovo enquiry, the District Forest Officer, Coimbatore in his proceedings dated 30.8.1997 has held that the charges against the petitioner in the denovo enquiry has been proved and imposed a punishment of Censure and the appeal preferred before the Principal Chief Conservator of Forest, Chennai against the punishment of Censure was rejected by an order dated 30.10.2001. Challenging the said order, the petitioner has filed the present writ petition before this Court.

2. The sole respondent has filed counter affidavit wherein it is stated that without exhausting alternate remedy available under Rule 57 of Tamil Nadu Government Servants General Rules before the appellate authority viz., Secretary to Government, the petitioner has approached this Court. The petitioner made representations before the respondent to include his name in the panel of Forest Guards selected for promotion to the post of Foresters for the year 1997-98 and the said representations were



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rightly rejected by the respondent as per the guidelines issued by the Government vide Lr.Ms.No.248, personnel and Administrative Reforms (S) department, dt.20.10.1997. The relevant portion of the said Government letter is as follows:

"Any punishment other than "Censure imposed on an officer within a period of five years, prior to the crucial date and a punishment of "Censure within a period of one year prior to the crucial date should be held against the officer. In such a case, the officer's name should be passed over".

According to the respondent, while the panel of Forest Guards fit for promotion to the post of Foresters was drawn for the year 1997-98 fixing the crucial date as 15.8.1996, though the order of punishment i.e. postponement of increment for three years with cumulative effect passed by the District Forest Officer was set aside by the respondent and ordered denovo enquiry, the charge sheet issued under Rule 17(b) of Tamil Nadu Civil Services (Disciplinary & Appeal) Rules had automatically stands revived and as per the guidelines issued by the Government, "pendency of charges framed under Rule 17(b) of Tamil Nadu Civil Services (Disciplinary & Appeal) Rules, should be held against the officer and inclusion deferred until finalization of the disciplinary proceedings. The currency of punishment cannot be counted from the date of original punishment i.e. 18.5.1987, it should be counted from the retrial date i.e. the petitioner appeared for denovo enquiry on 21.01.1997. Therefore, the respondent has rightly rejected the review filed by the petitioner and there is no irregularities or illegality in the impugned order.

3. Heard the rival submissions of the parties and perused the materials available on record.

4. According to the learned Senior counsel appearing for the petitioner, the punishment imposed in de novo enquiry will have to be given effect to only from the date of the original punishment imposed by the disciplinary authority, not from the subsequent date which will debar the petitioner from being promoted as Forester. The alleged delinquency held in the year 1985 and the crucial date for the preparation of the panel is 15.8.1996. The learned Senior counsel appearing for the petitioner relied on the provision contained in Rule 11 of Schedule XI of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 which reads as follows:



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"Any punishment (other than "Censure") imposed on a member of service within a period of five years prior to the crucial date and a punishment of "Censure" imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. Any punishment, including "Censure" imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment."

5. Further, it is contended by the learned Senior counsel appearing for the petitioner that as per the guidelines issued by the Government, dated 20.10.1997, if the punishment is imposed during the check period and the occurrence had taken place 5 years prior to the date of punishment, then it is not held against the officer. Admittedly, the petitioner was imposed with a punishment of Censure on 30.8.1997 and the occurrence for which the punishment was imposed relates to the year 1985 and hence, as per the guidelines, it is not held against the officer. The reason mentioned that there is currency of punishment dated 30.8.1997 cannot be sustained in view of the guidelines issued by the Government in respect of promotion. Though the punishment imposed against the officer was on 30.8.1997, the said punishment has to be given effect to only from the date of original punishment which was imposed on 18.5.1987. The respondent had taken vast time i.e. about 10 long years for disposal of the disciplinary proceedings which cannot be put against the petitioner. Therefore, the punishment has to be given effect to only from the date of the original punishment i.e. on 18.5.1987 whereby the punishment imposed against the petitioner was not within a period of one year from the crucial date and as such the petitioner is entitled to get his promotion as Forester by including his name in the panel drawn for the year 1997-98. Hence, the impugned order is liable to be set aside.

6. According to the learned Additional Government Pleader (Forest) appearing for the petitioner, though the punishment was originally imposed on the petitioner on 18.5.1987, the same



was set aside and de novo enquiry was ordered by the respondent, thereby charge sheet issued under Rule 17(b) had automatically stands revived and while so, the panel for promotion to the post of Forester was drawn for the year 1997-98. There was a currency of punishment during the relevant period. Therefore, the representations made by the petitioner on 6.9.2003. 18.8.2008 to include his name in the panel of Forest Guards selected for promotion as Forester for the year 1997-98 was rejected by the respondent. Further, review preferred by the petitioner against the order of Censure was also rejected by the respondent by an order, dated 30.10.2001 against which no appeal was filed by the petitioner. Therefore, there is no warrant to interfere with the impugned order passed by the respondent and the writ petition is liable to be dismissed.

7. Admittedly, the crucial date for the preparation of the panel for promotion to the post of Forester for the year 1997-98 is 15.8.1996. According to the learned Senior counsel appearing for the petitioner, "Any punishment (other than 'Censure') imposed on a member of service within a period of five years prior to the crucial date and a punishment of 'Censure' imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. Whereas in the case on hand, originally, the punishment was imposed against the petitioner on 18.5.1987 i.e. alleged delinquency was not held within a period of five years from the crucial date and the punishment imposed against the petitioner was not within a period of one year from the crucial date i.e. on 18.5.1987. Therefore, the petitioner is entitled to get his promotion as Forester by including his name in the panel drawn for the year 1997-98.

8. The Full Bench of this Court in The Deputy Inspector General of Police and Ors. Vs. Respondent: V. Rani (MANU/TN/1299/2011) held as under:

"8 it is also explained about the effect of punishment on inclusion in the panel. Clause (b) II reads as follows: (b) II. Effect of punishments on inclusion in the panel 1 . As warning or severe warning is not a statutory punishment and since there is no provision for appeal, it need not be held against the Officer, whether it was awarded



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after framing of charges under Rule 17(a) or 17(b) of Tamil Nadu Civil Services (D&A) Rules. 2. Any punishment, other than 'Censure' imposed on an Officer within a period of Five years prior to the crucial date and a punishment of 'Censure' within a period of one year prior to the crucial date (or censure imposed after the crucial date, but before actual promotion) should be held against the Officer. In such a case the Officer's name should be passed over. Provided that if the officer was imposed within any of the punishments within the check period as mentioned above for irregularities/delinquencies which occurred five years prior to the crucial date, such punishment need not be held against him, if such penalty is not in currency on the crucial date and also on the date of consideration of the panel. Provided that an Officer passed over once, need not be passed over for the second time on account of the same punishment at the time of subsequent consideration for the next panel.

Since the punishment of censure is one of the codified punishments, the aforesaid provisos will apply to censure also. The punishment of censure imposed within one year prior to the crucial date or the punishment of censure imposed after the crucial date but before actual promotion, should be held against the Officer. However, the punishment of censure imposed within a period of one year proceeding the crucial date need not be held against the officer if the delinquency had occurred prior to 5 years preceding the crucial date. I am also to clarify that the same censure need not be held against an officer more than once as per the aforesaid second proviso in para 411(2) of the Government letter first cited.

9. The delinquency in the case on hand, had occurred prior to 5 years preceding the crucial date. However, the punishment of Censure imposed after the crucial date. Therefore, as on crucial date i.e. 15.8.1996, there was no currency of



punishment, but charge sheet was pending against the petitioner.

10. However, admittedly, the charge memo was served on the petitioner on 3.3.1986 and the originally punishment was imposed against the petitioner on 18.5.1987, however the same was set aside and denovo enquiry was ordered by the respondent and thereafter, the punishment of Censure was imposed against the petitioner on 30.8.1997.

11. As per Rule 14 of Schedule XI of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, "the punishment of 'Censure' imposed on a member of service within a period of one year preceding the crucial date shall not be held against a member of service, if the delinquency in respect of which such punishment is imposed had occurred prior to five years preceding the crucial date. In such cases, the name of the member of service shall be considered for inclusion in the approved list. In the case on hand, the delinquency occurred in the year 1985 and originally, the punishment was imposed against the petitioner on 18.5.1987. The crucial date for the preparation of the panel for promotion to the post of Forester was drawn for the year 1997-98 is 15.8.1996. Therefore, the delinquency in the case on hand, had occurred prior to 5 years preceding the crucial date. In such view of the matter, the petitioner is entitled for promotion to the post of Forester.

12. Taking note of the ratio laid down by the Hon'ble Full Bench of this Court, the impugned order passed by the respondent, dated 18.2.2009 is quashed. Consequently, the petitioner is entitled for notional promotion on par with his juniors promoted as Forester. The respondent is directed to revise the pensionary benefits and settle the arrears to the petitioner within a period of four months from the date of receipt of copy of this order.

13. Accordingly, the writ petition is allowed with the above directions. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR



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To

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The Principal Chief Conservator of Forests,
Panagal Buildings, Chennai-15.

+lcc to the Special Government Pleader Sr.7797

W.P.No.25760 of 2009

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srg 22/02/2022