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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESEVED ON: 21.01.2022
DELIVERED ON: 28.01.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.24784 of 2010

A.Janathipathi ... Petitioner

vs.

1.The Director General of
Railway Protection Force and Security,
Railway Board, New Delhi.

2.The Chief Security Commissioner,
Railway Protection Force,
6th Floor, Moore Market Complex,
Chennai-600 003.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to consider the petitioner for promotion to the post of Assistant Sub Inspector by awarding marks for left out years of 2001 and 2003 and marks for reward, awards, commendation etc. obtained by him and put him in the proper place of seniority and pass final orders.

For Petitioner : Mrs.Nalini Chidambaram, Senior Counsel
for Mrs.C.Uma

For Respondents : Mr.M.Vijay Anand
Standing Counsel for R1 and R2

O R D E R

The prayer in the writ petition is for a Mandamus directing the respondents to consider the petitioner for promotion to the post of Assistant Sub Inspector by awarding marks for left out years of 2001 and 2003 and marks for rewards, awards,



commendation etc., obtained by him and put him in the proper place of seniority and pass appropriated orders.

2. The case of the petitioner is that he was appointed as Constable and joined duty on 02.01.1991 after completion of initial course training from 2.5.1990 to 31.12.1990 and having unblemished 20 years of service. The petitioner was awarded commendation certificate appreciating his exemplary services rendered during Mahamaham Festival - 2004 held at Kumbakonam and he successfully completed Small Arms Course training from 30.12.2002 to 11.01.2003 and was given cash rewards on 8.1.2004, 22.11.2005, 21.02.2006 and 16.05.2006 by the Divisional Security Commissioner, R.P.F. Trichy. While that being so, vide orders of the first respondent, the second respondent has conducted Limited Departmental Competition for selection to the post of Assistant Sub-Inspector under 40% Promotion Quota. The petitioner attended the Written Examination on 23.07.2006 and Viva Voce on 06.08.2006. The petitioner totally secured 65 marks in the above examination and placed at Sl.No.24 and was declared qualified.

3. It is the grievance of the petitioner that while awarding marks in the above competition, the second respondent has not considered and awarded any marks to the petitioner for the record of service for the years 2001 and 2003 of character and service roll. Though the criteria for awarding "Outstanding" was possible for the years 2001 and 2003, grading was not recorded in the C.S.R and not taken into consideration while preparing the panel for the post of Assistant Sub Inspector. The second respondent has not considered and awarded marks to the petitioner for reward, awards, commendation etc., obtained during the period 2001 to 2005, while preparing the panel for the post of Assistant Sub Inspector.

4. The petitioner, therefore, filed W.P.No.5501 of 2010 for a Mandamus directing the respondents to consider his representation dated 03.01.2010 for promotion to the post of Assistant Sub Inspector by awarding marks for the left out service years 2001 and 2003 and marks for Rewards, Awards, Commendations etc., and this Court, vide order dated 07.03.2010, has disposed of the said writ petition by directing the second respondent to consider the representation of the petitioner on merits and in pursuant to the same, the second respondent has passed orders on 31.08.2010, without giving due weight to the orders of this Court. Hence, the petitioner has filed the present writ petition.



5. The respondents had filed a counter affidavit along with typed set of documents, wherein it has been stated that the Selection Committee nominated by the second respondent has considered and awarded marks as per the Annual Confidential Reports available in the Confidential Service Record of the petitioner and the ACRs for the years 2001 and 2003 were available but the overall grading has not been indicated for those two years and the petitioner's performance in various parameters in the ACR for the years 2001 and 2003 has been rated as "Good", as has been rated for the years 2002, 2004 and 2005. It is further stated in the counter affidavit that the Selection Committee nominated by the second respondent has awarded the marks as per Rule 70 of RPF Rules, 1987 and there is no provision to award marks for Rewards and Awards for grading in ACR as averred by the petitioner. In the petitioner's ACR, overall grading was taken as "Good" on the assessment of his performance and the petitioner's performance has not been rated as "Outstanding" even in one of the parameters viz, "Obedience and Response", "Work Attitude", "Dependability", "Initiative" and "Integrity" during the years 2001 and 2003. It is also stated in the counter affidavit that as per Railway Board's instructions, only the empanelled candidates need to be considered for promotion, even if a vacancy arises due to death of a successful candidate subsequently and the petitioner was not at all empanelled and therefore, he is not eligible to be considered for promotion and hence, prayed for dismissal of this writ petition.

6. Mrs.Nalini Chidambaram, learned Senior Counsel for the petitioner would contend that non award of marks by the second respondent for the left out years of 2001 and 2003 is illegal, against natural justice and contrary to Rule 71 of the Railway Protection Force Rules, 1987 and non-consideration of rewards, awards, commendations etc., conferred on the petitioner by the second respondent is also against Rule 239 of the Railway Protection Force Rules, 1987. It is further contended by the learned Senior Counsel for the petitioner that due to belated grading, the petitioner has been denied marks for the years 2001 and 2003 under the head "Record of Service" and consequently his name has not been included among the empanelled candidates and if the awards, rewards, commendations has been taken note of, he would have got the grading as "Outstanding" for the years 2001 and 2003 and would have secured additional 2 marks and his total would have been 17 marks under the head "Record of Service" and the petitioner would have secured 67 marks totally and would have been promoted as ASI of RPF or atleast his name would have been included among the empanelled candidates.



7. Mr.M.Vijayanand, learned Standing Counsel for Railways / respondents would contend that the prayer in the writ petition itself is not maintainable in the absence of any challenge made to the selection process and therefore, petitioner cannot seek a mandamus to select him as Assistant Sub Inspector by awarding marks based on his ACR. It is further contended that eventhough the petitioner is qualified in the written examination and viva voce, he is not recommended for empanelment due to his shortage of marks and even assuming that the petitioner was graded "Outstanding" for the two years 2001 and 2003 and given 2 additional marks, he would have got only 67 marks and whereas for being selected in the empanelled list, the petitioner should have secured 69 marks. It is also contended that the selection process was purely based on the Railway Standing Order No.87 and also duly following Rule 70 of the RPF Rules, 1987 and there is no provision to award marks for Rewards, Awards for grading in the ACR, as pleaded by the petitioner and selection process has been conducted in terms of Rule 71 of RPF Rules, 1987 and as per Railway Board's Instructions only the empanelled candidates need to be considered for promotion, even if any vacancy arises due to death of a candidate and therefore, prays for dismissal of this writ petition.

8. This Court has considered the submissions made and also perused the materials placed before it.

9. The fact remains that the petitioner has secured 65 marks in the Written Examination and Viva Voce and declared qualified for selection to the post of Assistant Sub Inspector of Police, but his name was not empanelled in the selection list on account of shortage of four marks. It is the grievance of the petitioner that while awarding marks, the second respondent has not awarded any marks to the petitioner for the record of service for the years 2001 and 2003 of character and service roll and though the criteria for awarding "Outstanding" was possible for the years 2001 and 2003, grading was not recorded in the C.S.R and not taken into consideration while preparing the panel for the post of Assistant Sub Inspector and if he had been graded "Outstanding" for the years 2001 and 2003, he would have secured additional 2 marks and his total would have been 17 marks under the head "Record of Service" and the petitioner would have secured 67 marks totally and would have been promoted as ASI of RPF or atleast his name would have been included among the empanelled candidates. However, it is the stand of the respondents that even assuming that the petitioner was graded "Outstanding" for the two years 2001 and 2003 and given 2



additional marks, he would have got only 67 marks and whereas for being selected in the empanelled list, the petitioner should have got 69 marks and therefore, the petitioner would not come within the zone of consideration.

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10. The learned Senior Counsel for the petitioner made an alternative plea that the name of the petitioner may be considered for promotion to the post of Assistant Sub Inspector in the vacancy that arose due to the death of a person in the empanelled list. Further, the petitioner has not challenged the selection process and unless the selection process is challenged, this Court cannot come to the aid of the petitioner. As rightly pointed by the learned Standing Counsel for the Railways, the selection process has been conducted in terms of Rule 71 of RPF Rules, 1987 and as per Railway Board's Instructions, only the empanelled candidates need to be considered for promotion, even if any vacancy arises due to death of a candidate and therefore, unless the petitioner challenges the selection process, the prayer sought for by the petitioner cannot be granted.

11. The writ petition lacks merit and accordingly, it is dismissed. No costs.

SD/-

ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

Jvm

To

1.The Director General of
Railway Protection Force and Security,
Railway Board, New Delhi.

2.The Chief Security Commissioner,
Railway Protection Force,
6th Floor, Moore Market Complex,
Chennai-600 003.

+1cc to M/s.M.Vijay Anand, Advocate Sr.5122

+1cc to Mrs.C.Uma, Advocate Sr.5434

W.P.No.24784 of 2010

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srg 22/02/2022