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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
19.04.2022	28.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.7892 of 2014

V.Augustine Peter

...Petitioner

Vs.

1.The Secretary to Government
Home (Police II) Department,
Fort St. George, Chennai-9.

2.The Director General of Police,
Mylapore, Chennai - 600 004.

...Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to consider the claim of the petitioner for promotion as Deputy Superintendent of Police Category-I for the year 2011-12 without reference to the punishment of censure imposed by the 2nd respondent in RC.No.061494/API(1)/2013 dt.30.09.2013 and promote the petitioner as Deputy Superintendent of Police Category-I and grant him all consequential service and monetary benefits at par with his juniors.

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

For Respondent : Mr.R.Neelakandan, A.A.G.
Assisted by
Mr.P.Anandakumar, G.A.

O R D E R

According to the petitioner, the petitioner was entered into service on 27.9.1989 as a directly recruited Sub Inspector of Police and was promoted as Inspector of Police on 19.12.1999. The petitioner while serving as Inspector of Police, Erode district was served with charge memo on 26.1.2010 under Rule 3 (b) of Tamil Nadu Police Subordinate Service (D & A) Rules alleging that the petitioner failed to entertain the complaint preferred by one Thiru Manian, H/o WPC Jayamani to him on 25.8.2009 about missing of his wife and instead tossed the complaint and thus liable for belated registration of a case on



30.8.2009 in Peramanallur Police Station Cr.No.554 of 2009 under Sec.Woman missing and subsequently altered it into Sec.302 I.P.C. and enquiry officer held that the charges against the petitioner has been proved by a minute dated 6.1.2012. The Disciplinary Authority viz., Deputy Inspector General of Police, Coimbatore, by an order dated 8.5.2012 agreed with the findings of the enquiry officer, imposed a punishment of postponement of increment for a period of one year without cumulative effect and the appeal preferred before the Appellate Authority viz., Additional Director General of Police, L & O, Chennai was rejected. Being aggrieved, the petitioner preferred a review before the second respondent wherein the punishment was modified into one of Censure by an order dated 30.9.2013. The petitioner attained sufficient seniority and merit for consideration of his claim for promotion to the post of Deputy Superintendent of Police, Category I for the year 2011-12. The crucial date for the preparation of the panel was 1.6.2011. When the panel was published for 2011-12, the claim of the petitioner was overlooked on the ground that the petitioner has suffered a punishment of postponement of increment for a period of one year without cumulative effect imposed by the Deputy Inspector General of Police, Coimbatore Range, Coimbatore in R.No.D1/PR6/2012 dated 8.5.2012. Whereas, the petitioner's junior by name Pugalenthil was promoted as per Police Note No.2 dated 2.3.2013 and he is serving as Deputy Superintendent of Police. Again, when the panel was prepared for the year 2012-13 which was published in November, 2013, the claim of the petitioner was overlooked on the ground that the petitioner has suffered a modified punishment of Censure imposed by the Director General of Police, Chennai, dated 30.9.2013. Now, the petitioner seeks Mandamus directing the respondents to consider the claim of the petitioner for promotion as Deputy Superintendent of Police, Category I for the year 2011-12 without reference to the punishment of Censure imposed by the second respondent and promote the petitioner as Deputy Superintendent of Police, Category I and grant all consequential service and monetary benefits to the petitioner.

2. The second respondent has filed counter affidavit wherein the second respondent denied the averments made in the affidavit filed by the petitioner. The second respondent has further stated that the petitioner was placed under suspension with effect from 12.11.2009 by the Deputy Inspector General of Police, Coimbatore Range, Coimbatore in R.O.No.393/2009 (C.No.D1/8910/2009) and subsequently, suspension was revoked with effect from 2.2.2010 vide Range Order no.30/2010 dated 1.2.2010. Charge has been framed against the petitioner under Rule 3(b) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 in P.R.No.02/2010 of Erode District for the following delinquency:



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"gross neglect of duty and unethical act in having failed to entertain the complaint preferred by Thiru Manian, H/o WPC 2447/Erode Jayamani (since deceased) to him on 25.8.2009 about the missing of his wife and instead tossed the complainant and thus liable for belated registration of a case in this regard on 30.8.2009 in Perumanallur Police Station Cr.No.554 of 2009 Woman missing subsequently altered into under Sec.302 I.P.C. On 18.9.2009."

In the year 2011-12 viz., the petitioner was having currency of punishment of of "'Postponement of increment for one year without cumulative effect'". Therefore, his name was not considered to include in the panel for promotion to the post of Deputy Superintendent of Police, Category I for year 2011-12. Since the modified punishment of Censure was also under currency on the crucial date i.e. 1.6.2012, the claim of the petitioner was not considered for the panel year 2012-13 also. According to the second respondent, since the charges framed under Rule 3(b) of Tamil Nadu Police Subordinate Services (D & A) Rules are equivalent to charges framed under Rule 17(b) of Tamil Nadu Civil Services (D & A) Rules, the modification of punishment of "'Censure'" is also impediment on crucial date i.e. 1.6.2012. Therefore, the writ petition is liable to be dismissed.

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, if the punishment is modified into lesser punishment it will take effect from the date of imposing the original punishment. In the case of the petitioner, the initial punishment of postponement of increment for one year was imposed on 8.5.2012 which will have effect till 7.5.2013. If the punishment is modified into one of Censure, it is to be presumed that Censure will take effect from 8.5.2012, but in view of the Full Bench decision of this Court, it has been specifically stated that the punishment of Censure has no currency by quashing the Guidelines issued by the Government stating that it has got no statutory sanction, the punishment of Censure imposed on the petitioner will be of no consequence and the petitioner is entitled to get his promotion as Deputy Superintendent of Police, Category I for the year 2011-12. The operative portion of the Full Bench judgment reads as follows:

"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. Xxx xx It is



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needless to state that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible.

Xxx xx xxx

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 of other minor punishments is illegal and impermissible under the statutory rule.'

Further, it is submitted that the order of the Division Bench of this Court was confirmed by the Hon'ble Supreme Court when the matter was taken on appeal by way of S.L.P. preferred by the State Government and the SLP was dismissed in SLP (Civil) No.4126 to 4141 of 2012 dated 16.3.2012 and the first respondent has implemented the orders of the Division Bench in number of cases wherein, the persons who have suffered punishment of Censure, their claims have been considered and they were promoted to the higher post without reference to the punishment of Censure. In one such case, the Government implemented the orders of this Court in W.P.No.14903 of 2012 dated 13.6.2012 in the case of one Suresh Kumar. It is further submitted that even as per the Guidelines for promotion, if a Government servant's claim for a promotion is deferred on the ground of currency of punishment or formulated charges and such person is subsequently exonerated of the charges, or the punishment is modified which will have no consequence on his promotion, then the respondents have to consider his claim for promotion and he should be promoted retrospectively from the date on which he become due for promotion on par with his juniors. The learned Senior Counsel appearing for the petitioner relied on the unreported judgment of this Court in D.ANTONY RAJ VS. THE DISTRICT COLLECTOR (PANCHAYAT DEVELOPMENT WING), VILLUPURAM (W.P.No.5736 of 2007 dated 20.6.2012) to contend that the punishment of Censure cannot be a ground to deny promotion to an employee who was otherwise found eligible. Therefore, the petitioner is entitled to get his promotion as Deputy Superintendent of Police, Category I for the year 2011-12.

5. According to the learned Government Advocate appearing for the respondents, in the year 2011-12 viz., the petitioner was having currency of punishment of 'Postponement of increment for one year without cumulative effect'. Therefore, his name was not considered and included in the panel year 2011-12. Since the modified punishment of Censure was also under currency as on the crucial date i.e. 1.6.2012, the claim



of the petitioner was not considered for the panel year 2012-13 also.

6. It is relevant to extract Rule 11 of Schedule XI of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 which reads as follows:

"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."

7. According to the learned Government Advocate appearing for the respondents, "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. The crucial date for the preparation of the panel for promotion to the post of Deputy Superintendent of Police for the year 2012-13 is 1.6.2012. The Punishment of Censure was imposed on the petitioner on 30.9.2013. The alleged delinquency was held within a period of five years from the crucial date i.e. 25.8.2009. Therefore, the claim of the petitioner for promotion to the post of Deputy Superintendent of Police for the panel year 2012-13 was not considered.

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 after framing of charges under Rule 17(a) or 17(b) of Tamil Nadu Civil Services (D&A)



date (1.6.2013). The punishment of Censure imposed on 30.9.2013 i.e. after the crucial date. The petitioner's name was not considered for promotion to the post of Deputy Superintendent of Police for the panel year 2011-12 and subsequently for the panel year 2012-13 also taking note of the modified punishment 'Censure' imposed on 30.9.2013. Originally, the punishment of postponement of increment for one year without cumulative effect was imposed on 8.5.2012 and the same was subsequently modified as the punishment of Censure on 30.9.2013. Therefore, the punishment of Censure will have the effect from 8.5.2012. The Government ought to have taken note of the date of original punishment i.e. 8.5.2012, instead of 30.9.2013. Further, the Full Bench of this Court in V. Rani case cited supra, clarified that the punishment of 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." and the said judgment has become final before the Hon'ble Supreme Court in the SLP filed in SLP (Civil) No.4126 to 4141 of 2012 dated 16.3.2012.

11. Based on the aforesaid judgment, the Director General of Police, Tamil Nadu, the second respondent herein in his letter to the Principal Secretary to Government vide letter in Rc.No.200206/GB-II(1) dated 20.11.2013 has stated that as per the orders of the Full Bench of this Court, the check period of one year in respect of the punishment 'Censure' was quashed by this Court and the said judgment was upheld by the Hon'ble Supreme Court and therefore, this Court is of the view that the petitioner is eligible for inclusion in 2012-2013 panel for promotion to the post of Deputy Superintendent of Police, Category 1.

12. In the light of the Full Bench judgment in V.Rani case cited supra which squarely covers the petitioner's case at the relevant point of time, the petitioner is entitled for notional promotion to the post of Deputy Superintendent of Police, Category-I for the panel year 2012-2013 and monetary benefits. Accordingly, the first respondent is directed to consider the claim of the petitioner and pass appropriate orders within a period of 12 weeks from the date of receipt of copy of the order.

13. In the result, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar(CS-VI)

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Sub Assistant Registrar

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To

1.The Secretary to Government,
Home (Police II) Department,
Fort St. George, Chennai-9.

2.The Director General of Police,
Mylapore, Chennai - 600 004.

+lcc to the Special Government Pleader Sr.No.30698

W.P.No.7892 of 2014

SKM(CO)
RVM(12/05/2022)