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W.A.No.595 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.08.2023

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.595 of 2022

A.Janathipathi

.. Appellant

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

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 28.01.2022 passed in W.P.No.24784 of 2010.

For Appellant : Mr.A.Muthukumar

For Respondents : Mr.V.Chandrasekaran

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This Writ Appeal arises out of the order dated 28.01.2022 passed by the learned Judge in W.P.No.24784 of 2010.



W.A.No.595 of 2022

2.The case of the appellant herein is that he was appointed as Constable and joined duty on 02.01.1991 in the respondent-Railway Protection Force. He participated in the Limited Departmental Competition for selection to the post of Assistant Sub-Inspector (ASI) under 40% promotion quota under Rule 72 of the Railway Protection Force Rules, 1987 and secured 65 marks in the said examination and he was placed at Sl.No.24. While awarding marks, his record of service for the years 2001 and 2003 was not taken into consideration and therefore, he was not selected for empanelment. Hence, he submitted a representation on 03.01.2010 to consider him for promotion to the post of ASI. As there was no response for the said representation, he filed W.P.No.5501 of 2010 seeking a mandamus, in which, the learned Judge passed an order on 07.07.2010 directing the second respondent therein to consider the representation of the appellant, on merits. According to the appellant, without giving due weightage to the order passed by the learned Judge, the second respondent passed the order on 31.08.2010. Aggrieved by the same, the appellant preferred W.P.No. 24784 of 2010 and the learned Judge, *vide* the impugned order, dismissed the writ petition finding no merit. Challenging the said dismissal order, the appellant is before this Court with the present appeal.



W.A.No.595 of 2022

3.The learned counsel for the appellant has submitted that the learned Judge has failed to see that non-awarding of two marks was pending to be given to the appellant for a long time and it was not communicated to the appellant and that, had it been informed to the appellant earlier, he would have certainly applied for change of grade from 'Good' to 'Outstanding' and this point was not considered in the impugned order and hence, the same deserves to be set aside. Further, pointing out to the selection of 17 other candidates as per the judgment of the Kerala High Court in W.A.No.966 of 2009 to draw a panel for 17 more vacancies, the learned counsel submitted that the cut off marks for the UR category is 66.5, whereas the appellant has got 67 marks. Due to the belated grading of the appellant by the Department by denying marks for the years 2001 and 2003 under the head 'Record of Service', his name was not included among the empanelled candidates. With these submissions, the learned counsel prayed for setting aside the impugned order and allowing this appeal.

4.The learned counsel appearing for the respondents / Railway Protection Force, has submitted that even assuming that the appellant was graded 'Outstanding' for the two years 2001 and 2003 and given 2 additional marks, he would have got only 67 marks, whereas for being selected in the empanelled list, he should secure 69 marks. The learned counsel further submitted that the



W.A.No.595 of 2022

learned Judge has passed the impugned order, taking note of all the facts and circumstances without paving way for any ambiguity by observing the above fact and by observing that the selection process has not been challenged. Thus, the learned counsel submitted that the impugned order does not require any interference in the hands of this Court.

5. Heard the learned counsel on either side and perused the records available on record carefully and meticulously.

6. According to the appellant / writ petitioner, though the criteria for awarding 'Outstanding' was possible for the years 2001 and 2003, grading was not recorded in the CSR and it was not taken into consideration while preparing the panel for the post of Assistant Sub Inspector. On the other hand, it is the stand of the respondents that the Selection Committee nominated by the second respondent has awarded the marks as per Rule 70 of the Railway Protection Force Rules, 1987 and there is no provision to award marks for Rewards and Awards for grading in ACR as averred by the appellant. It is the further stand of the respondents that even if a vacancy arises due to the death of a successful candidate subsequently, only the empanelled candidates need be considered for promotion and that, the appellant was not empanelled and hence, he is not



W.A.No.595 of 2022

eligible. Considering the facts and circumstances of the case, the learned Judge has correctly observed that only the empanelled candidates need be considered for promotion even if any vacancy arises due to the death of a candidate and further, the appellant has not challenged the selection process. In this connection, it remains to be stated that for being selected in the empanelled list, the appellant should have got 69 marks, whereas even if the additional 2 marks are added, it will come to only 67. Further, in the order passed in W.P.No.5501 of 2010 dated 07.03.2010, the authority was directed only to consider the representation of the appellant on merits and not otherwise and thus, no positive direction was issued and accordingly, the second respondent has passed the order dated 31.08.2010.

7.In view of the above stated circumstances, the impugned order passed by the learned Judge requires no interference. However, taking note of the submissions made by the counsel for the appellant that the selection of 17 other candidates is as per the judgment of the Kerala High Court in W.A.No.966 of 2009 to draw a panel for 17 more vacancies; that the cut off marks for the UR category is 66.5 and the appellant has got 67 marks and hence, his case has to be considered, liberty is granted to the appellant to approach the authority concerned with appropriate representation in this regard and if that is done, the



W.A.No.595 of 2022

authority concerned shall consider the same and pass appropriate orders on merits and in accordance with law.

8.The writ appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]

22.08.2023

Internet : Yes
Neutral Citation : Yes/No
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