



W.P.No.8932 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>03.01.2023</i>
<i>Pronounced on</i>	<i>13.02.2023</i>

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.8932 of 2018

P. Rajendran

... Petitioner

Vs.

1.The Superintendent of Police,
Salem District.

2.The Deputy Inspector General of Police,
Salem Range, Salem.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondents in connection with the impugned orders passed by the first respondent in PR.No.72/H3/2001 dated 11.07.2012 and by the second respondent in Na.Ka.No.B1/76/1379/2014 Appeal No.55/2014 dated 05.06.2014 and consequential order issued by the first respondent in D.O.No.1079/2015 Rc.No.H.3/PR.72/2011 dated 24.11.2015 and the consequential order passed by the second respondent in C.No.A3/6116/2016 R.O.215/2016 dated 12.09.2016 and quash the same.



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For Petitioner : Mr.K. Venkataramani, Sr. counsel
for M. Muthappan

For Respondents : Mr.T. Chezhiyan,
Additional Government Pleader

ORDER

While the petitioner was serving as a Head Constable under the respondents, he was served with a Charge Memo dated 23.05.2011, on the charge that he had remained on an unauthorized absence from 25.02.2011 to 26.03.2011 and accordingly, was treated as deserter. Between 27.03.2011 to 25.04.2011, the petitioner was on medical leave. Thereafter, he had once again remained on unauthorized absence from 26.04.2011 to 11.12.2013 for which, a Charge Memo was issued on 17.12.2013 under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

2. For the charges under the Charge Memo dated 23.05.2011, the Disciplinary Authority had imposed a punishment of stoppage of increment for a period of two years with cumulative effect on 11.07.2012. As against this order of punishment, the petitioner has filed an appeal before the first respondent herein, who has modified the punishment into 'Black Mark' on 15.06.2015. Insofar as the



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charges levelled under the Charge Memo dated 17.12.2013, the Disciplinary Authority had imposed a punishment of stoppage of increment for a period of six months without cumulative effect, which also came to be confirmed in the appeal.

3. The learned senior counsel appearing for the petitioner submitted that the respondents ought not to have deferred the upgradation of the petitioner to the post of Speical Sub-Inspector of Police, due to the punishment of stoppage of increment for the period of two years without cumulative effect. Insofar as the award of punishment is concerned, the learned senior counsel submitted that he is not pressing for interference to the punishment and that he would be satisfied if the petitioner's upgradation is granted.

4. On the other hand, the learned Additional Government Pleader appearing for the respondents placed reliance on the averments in the counter-affidavit and submitted that the crucial date for upgradation as Special Sub-Inspector of Police was 01.06.2013. Since the petitioner was on desertion from 26.04.2011 to 11.12.2013 during the crucial date, his name was deferred from upgradation and there is no infirmity in the said order.



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5. It is no doubt true that pendency of the disciplinary proceedings can be cited as a reason for deferring the upgradation or in consideration of a delinquent's name in the promotional panel. What would be relevant for such deferment would be the pendency of a disciplinary proceedings or a currency of a punishment on the crucial date of such upgradation/promotion.

6. In the instant case, on the crucial date i.e. on 01.06.2013, the petitioner was on unauthorized absence for the period between 26.04.2011 to 11.12.2013. As he had continued to be absent for more than 21 days, he was treated as deserter with effect from 26.04.2011 under orders of the respondent dated 23.05.2011. The Charge Memo in connection with this unauthorised absence and treating the petitioner as a deserter came to be issued only on 17.12.2013.

7. The pendency of a disciplinary proceedings would commence from the date of the Charge Memo till final orders of punishment is passed or the proceedings are dropped. Hence, as on 01.06.2013, there was no Charge Memo pending against the petitioner herein and



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he was only on unauthorised absence. Under Rule 108 of the Fundamental Rules, such unauthorized absence could be treated as a misbehaviour and the petitioners pay and leave salary can be withheld and nothing more.

8. In **'Union of India & others Vs. K.V. Jankiraman & others'** reported in **'1991 4 SCC 109'**, the Hon'ble Supreme Court had held that, *"Only when a charge Memo in a disciplinary proceedings or a charge sheet in a criminal prosecution is issued to the employee, it can be said that the departmental proceedings/criminal prosecution is initiated against the employee"*.

Likewise, in Para 17 of the same judgment, it was held as follows:-

..... "17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No.1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions."



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9. On an overall reading of the aforesaid decision, the stand taken by the respondents that the petitioner's name for upgradation was deferred, since he was on an unauthorised absence, cannot be sustained, since there were no charges framed against him as on the crucial date i.e. on 01.06.2013. Thus, the subsequent upgradation of the petitioner as a Special Sub-Inspector of Police on 12.09.2016, may require intervention and the petitioner requires to be notionally promoted to the said post, on par with his immediate junior.

10. In view of the earlier submissions made by the learned senior counsel for the petitioner that he is not pressing the grounds challenging the impugned order of punishment, no interference is required to the same.

11. In the light of the above observations and findings, there shall be a direction to the second respondent herein, to forthwith pass orders, notionally promoting the petitioner from the date on which his immediate junior was promoted to the post of Special Sub-Inspector of Police under the promotional panel with the crucial date of



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01.06.2013, together with all service and other monetary benefits.

Such orders shall be passed atleast within a period of four (4) weeks from the date of receipt of a copy of this order.

12. Accordingly, the Writ Petition stands allowed. No costs.

13.02.2023

Speaking Order
Neutral Citation: Yes
Index : Yes
Internet: Yes

Sni/DP

To

- 1.The Superintendent of Police,
Salem District.
- 2.The Deputy Inspector General of Police,
Salem Range, Salem.



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M.S.RAMESH,J.

Sni/DP

Pre-delivery Order in
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