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WP No.22733 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

WP No.22733 of 2021

Mr.S.Jagannathan

... Petitioner

versus

- 1.The Central Administrative Tribunal,
Madras Bench
Represented by its Registrar,
Madras High Court Campus,
Chennai- 600 104.
- 2.The Union of India,
Represented by the Director,
Central Bureau of Investigation
CGO Complex, Lodhi Road,
New Delhi-110003
- 3.The Union of India,
Represented by the Secretary,
Ministry of Home Affairs,
New Delhi-110001.



WP No.22733 of 2021

4. The Union of India,

Represented by the Secretary,

Ministry of Personnel, Public Grievances and Pension,

Department of Personnel and Training,

North Block, New Delhi -110001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorarified Mandamus to call for the records of the impugned orders dated 05.03.2019 made in OA/310/00188/2015 dated 28.08.2019 made in RA/310/0014/2019 in OA/310/00188/2015 by the first respondent and quash the said impugned order and consequently direct the second respondent to confer the status of notional promotion in the cadre of Superintendent of Police to the petitioner with effect from 2004 for the purpose of availing retirement benefits/pensionary benefits.

For the Petitioner :Mr.R.Thirugnanam

For the Respondents:Mr.V.Chandrasekaran
Senior Panel Counsel
for respondent Nos.2 to 5

ORDER

(Order of the Court was made by *D.KRISHNAKUMAR, J.*)

The writ petition has been filed seeking a writ of Certiorarified Mandamus to call for the records of the impugned order dated 05.03.2019 in OA No.310/00188/2015 and the impugned order dated 28.08.2019 in RA/310/0014/2019 in OA/310/00188/2015 passed by the first respondent



WP No.22733 of 2021

and quash the said orders and consequently, direct the second respondent to confer the status of notional promotion in the cadre of Superintendent of Police to the petitioner with effect from 2004 for the purpose of availing retirement benefits/pensionary benefits.

Brief facts of the case:

2.1. The writ petitioner was appointed as Sub Inspector of Police by second respondent/Central Bureau of Investigation, in the year 1973 and he was promoted as Inspector and thereafter, as per seniority, he was promoted as Deputy Superintendent of Police and finally, promoted as Additional Superintendent of Police in the year 2001.

2.2. According to the petitioner, on 31.08.2004, the second respondent Department has published seniority list of departmental Additional Superintendent of Police. In the said seniority list, petitioner's name was fixed at Serial No.20 whereas his immediate juniors' names were fixed at Serial Nos.21 and 22. Subsequently, on 30.11.2004, the petitioner had retired from service on superannuation in the cadre of Additional



WP No.22733 of 2021

Superintendent of Police.

WEB COPY

2.3. After the retirement of the petitioner, on 31.12.2004, a promotion list in the cadre of Superintendent of Police was released by the second respondent wherein his immediate juniors were promoted as Superintendent of Police and his name was left out from the promotional list. On 05.01.2013, the petitioner has submitted a representation to the second respondent, seeking notional promotion to the cadre of Superintendent of Police. The second respondent, by order dated 08.02.2013, rejected the said representation by stating as *'since you had retired on superannuation on 30.11.2004 i.e. before issuing promotion order (31-12-2004), your name was considered in the DPC but name of the other officer in your place was provided by the DPC as well as competent authority, as per instructions laid down in DP&T OM No.22011/4/98-Estt.(D) dated 12.10.1998. It is not out of place to mention that none of your junior was promoted to the rank of SP before your retirement. Therefore, the your request for notional promotion cannot be considered being devoid of merit.*



WP No.22733 of 2021

2.4. Subsequently, another Memorandum has been passed by the Central Government in DOP&T Memorandum No.22011/1/2014-Estt (D) dated 14.11.2014, wherein guidelines have been laid down with regard to the inclusion of eligible officers who are due to retire before the likely date of vacancies in the panel of promotion.

2.5. The petitioner, on 27.11.2014, again submitted a representation to the second respondent seeking promotion to the grade of Superintendent of Police in the light of the instructions issued in the Office Memorandum dated 12.10.1998 and the Office Memorandum dated 14.11.2014. The second respondent, by order dated 23.12.2014, rejected the said representation by stating that *the petitioner's name was considered in the DPC meeting held on 09.11.2004 but the DPC has recommended the name of another officer in the extended panel in his place, he is being not available for promotion due to retirement.* Aggrieved by the said rejection order, the petitioner had filed an Original Application in OA No.310/00188/2015 before the Central Administrative Tribunal. The Tribunal, by order dated 05.03.2019, dismissed the said OA, holding that



WP No.22733 of 2021

the said OA is barred by limitation as per Section 21 of the Central Administrative Tribunal Act. Aggrieved by the said order of the Tribunal, the petitioner had filed a review application before the Tribunal in RA.No.310/0014/2019 and the same was dismissed by order dated 28.08.2019. Hence, the petitioner has filed the present writ petition before this Court.

3. Learned counsel for the petitioner submits that the second respondent has passed the rejection order without considering the Office Memorandum dated 12.10.1998 and subsequent Office Memorandum dated 14.11.2014 issued by the Department. He further submits that the order dated 23.12.2014, passed by the second respondent stating that instructions given in the Office Memorandum dated 14.11.2014 could not be applicable to the petitioner for the reason that said memorandum will not apply for the retired officers for granting promotion, is totally contrary to the aforesaid instructions issued in the said memorandums issued by the Department and therefore, the order of the Tribunal is liable to be set aside.



WP No.22733 of 2021

4. Learned Senior Panel Counsel appearing for respondents 2 to 5

would submit that in the order dated 23.12.2014, the second respondent has stated that the petitioner's representation dated 27.11.2014 has been examined in the light of the provisions of DOPT OM No.22011/4/98-Estt.(D) dated 12.10.1988 and OM No.22011/1/2014-Estt.(D) dated 14.11.2014 and further stated that Office Memorandum dated 14.11.2014 has issued instructions to all Ministries/Departments for compliance of the provisions made in their Office Memorandum dated 12.10.1988 and does not allow for grant of promotion to the retired officers.

5. Learned Senior Panel Counsel further submits that in the said order dated 23.12.2014 of the second respondent, it is stated that the petitioner's name was considered in the DPC meeting held on 09.11.2004 but the DPC has recommended the name of another officer in the extended panel in his place, for the reason the petitioner was not available for promotion due to retirement. Hence, the order of the Tribunal is perfectly right that the petitioner is not entitled for the notional promotion as claimed by him in the present case and therefore, seeks for dismissal of the writ petition.



WP No.22733 of 2021

6. Heard the parties and perused the material on record.

WEB COPY

7. We have gone through the order of the second respondent dated 23.12.2014. It is necessary to extract the relevant portions of the Memorandums dated 12.10.1988 and 14.11.2014.

7.1. The relevant portion of the Office Memorandum dated 12.10.1988 is extracted hereunder:

'(i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

(ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

(iii) Prepare a 'Select List' by placing the selection list of the earlier year above the one for the next year and so on.



WP No.22733 of 2021

7.2. The relevant portion of the Office Memorandum dated

14.11.2014 is extracted hereunder:

'2.Appointment Committee of Cabinet has observed that DPCs often do not consider such eligible officers who are retiring before the occurrence of the vacancy in the panel year. These undesirable trends negate the very purpose of the above said Office Memorandum No.22011/4/98-Estt(D) dated October 12,1998 and it is also against the principle of natural justice.

3.All the Ministries/Department are therefore advised to ensure strict compliance of the instructions of the Department of Personnel & Training issued vide this Department's OM No.22011/4/98-Estt(D) dated October 12,1998.

4.These instructions may please be brought out to the notice of all concerned including attached and subordinate officers.

7.3. It is clear that the aforesaid Memorandums have been issued for the benefit of the employees who have been in the zone of consideration but their names have not been included in the panel because they are due to



WP No.22733 of 2021

retire from service. Thus, the aforesaid Memorandums clearly state that the retired employees though have no right for actual promotion but they are entitled for notional promotion. While so, the second respondent has passed the order dated 23.12.2014 stating that the the petitioner's name was considered in the DPC meeting held on 09.11.2004 but the DPC has not recommended his name in the panel for the reason the petitioner was not available for promotion due to retirement on the date when the DPC prepared the panel on 09.11.2004 and hence the DPC not recommended his name. But the specific contention of the learned counsel for the petitioner before this Court is that the petitioner was actually in service on the 09.11,2004 when DPC meeting was held and the second respondent has passed the order without taking note of the aforesaid Memorandum dated 12.04.1998 and subsequent Memorandum dated 14.11.2014 and not granted the due benefit to the petitioner.

7.4. Learned Standing Counsel for the respondent has also fairly stated before this Court that the petitioner was in service on the date when the panel was prepared on 9.11.2004.

10/14



WP No.22733 of 2021

7.5. Considering the fact that the petitioner was in service and his name was considered in the DPC meeting held on 09.11.2004 but the DPC Committee has not recommended his name in the panel for promotion, while he was in service, the reason as stated in the order dated 23.12.2014 that he is not available for promotion due to retirement is not correct. The petitioner cannot be denied the opportunity for inclusion of his name for recommendation for promotion. Thereafter only, whether the petitioner was entitled for promotion or not would have been considered by the authority concerned under the relevant Rules.

7.6. Thus, in the considered opinion of this Court, the order is liable to be set aside and remitted back to the first respondent/Tribunal to consider afresh.

7.7. In view of the above, the impugned orders dated 05.03.2019 and 28.08.2019 passed by the Tribunal are set aside and consequently, the writ petition stands allowed and the matter is remitted back to the first respondent/Tribunal to consider the issue afresh and take appropriate



WP No.22733 of 2021

decision in the light of the Office Memorandum dated 12.10.1988 and the subsequent Office Memorandum dated 14.11.2014 and to pass appropriate orders on merits and in accordance with law, as early as possible, within a period of twelve weeks from the date of receipt of a copy of this order. There will be no order as to costs.

[D.K.K., J.] [P.D.B., J.]
01.11.2023

Index : Yes/No
Neutral Citation : Yes/No
mrn



WP No.22733 of 2021

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WEB COPY



WP No.22733 of 2021

D.KRISHNAKUMAR, J.

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P. DHANABAL, J.

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WP No.22733 of 2021

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