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WP No.14658 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

WP No.14658 of 2017

1. J.Ashok Kumar (Deceased)

2. A. Meenakshi

second petitioner- substituted as

Legal Heir of first petitioner

by order dated 13.10.2023

in WMP No.3197 of 2021

... Petitioners

versus

1.The Union of India

Represented by the Director,

BCG Vaccine Laboratory,

Guindy,

Chennai-600032.

2.The Central Administrative Tribunal,

Madras Bench, High Court Campus,

Chennai-600104

Represented by its Deputy Registrar.

... Respondents



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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 relating to the impugned order of the second respondent in OA No.1063 of 2013 dated 21.09.2016 and quash the same in so far as it directs promotion in the existing vacancy, if any available, and direct the first respondent to promote the first petitioner as Laboratory Assistant with effect from 11.06.2004 the date on which his immediate junior Ms.N.Shanthi was promoted and grant him all consequential benefits including payment of arrears of salary.

For the Petitioners :Mr.P.Rajendran

For the Respondents :Mr.N.Ramesh
Senior Panel Counsel
for first respondent
second respondent -Tribunal

ORDER

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

The writ petition has been filed challenging the order dated 21.09.2016 passed by the Central Administrative Tribunal in OA No.1063 of 2013.

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2. The first petitioner, Ashok Kumar, had died after the filing of the present writ petition and therefore, A.Meenakshi, who is the legal heir (wife) of the deceased first petitioner, has been substituted as the second petitioner by this Court on 13.10.2023 in WMP No.3197 of 2021. Now, the second petitioner seeks for the aforesaid relief.

3. Brief facts of the case:

3.1 The deceased first petitioner was initially appointed as Office Peon on ad hoc basis in the year 1989 in the first respondent Department and the adhoc appointment was continued from time to time without any break. Subsequently, in the year 1992, the deceased first petitioner was appointed as Laboratory Peon in the scale of pay of Rs.750-940 with effect from 20.06.1992. On 18.06.1995, the deceased first petitioner was declared to have completed the period of probation. Thereafter, the deceased first petitioner was promoted as Laboratory Attendant on 09.1.1997 and further promoted as Laboratory Assistant with effect from 16.05.2001. However, he was then reverted to the post of Laboratory Attendant with effect from 27.06.2001. While the deceased first petitioner was working as Laboratory



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Attendant, in the year 2004, his junior one Ms.N.Shanthi, Laboratory Attendant, was promoted as Laboratory Assistant by the first respondent Department, but however the deceased first petitioner's name was not considered for promotion to the said post for the reason that he was placed under suspension in the year 2003 and on 19.12.2003, disciplinary proceedings were initiated under Rule -14 of the Central Civil Service (CCA) Rules and the same were pending.

3.2. The deceased first petitioner had filed an original application in OA No.737 of 2008 before the Tribunal, seeking to quash disciplinary proceedings on account of delay in prosecuting the disciplinary proceedings in time. The Tribunal, by order dated 24.06.2009, had directed the first respondent Department to complete the enquiry within four months. The enquiry was completed on 03.11.2009. In the said enquiry, the enquiry officer gave a finding that the charges were held not proved and the disciplinary authority concurred with the report of the enquiry officer and passed an order on 26.10.2010 dropping all the charges. Thereafter, on 04.12.2010, the first respondent Department had issued an order, directing



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that the period of suspension shall be treated as duty and the deceased first petitioner should be paid full pay and allowance for the said period.

However, as the name of the deceased first petitioner was not considered for promotion only on the ground that he was facing disciplinary proceedings, he had submitted a representation seeking promotion on par with his junior N.Shanthi. The first respondent Department had passed an order dated 02.03.2013 in No.A12021/7/2010-Admn, stating that there was no vacancy in the post of Laboratory Assistant, and as and when vacancies arises, the deceased first petitioner would be considered for promotion.

3.3. Aggrieved by the said order dated 02.03.2013, the deceased first petitioner had approached the Tribunal by filing an original application under Section 19 of the Administrative Tribunal Act, 1985 in OA No.1063 of 2013 seeking to call for the records relating to the order dated 02.03.2013 and to quash the same and direct the first respondent to promote the deceased first petitioner as Laboratory Assistant with effect from 11.06.2004, the date on which his immediate junior Ms.N.Shanthi was promoted and grant him all consequential benefits including payment of



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arrears of salary. The Tribunal, by order dated 21.09.2016, had allowed the said original application and directed the first respondent department to accommodate the deceased first petitioner immediately in the existing vacancy, if any available. Aggrieved by the said order passed by the Tribunal, the deceased first petitioner has filed the present writ petition before this Court.

4. Learned counsel for the second petitioner submits that in the said OA, the first respondent Department has filed a reply-affidavit, wherein the first respondent Department has stated that the deceased first petitioner was absolved of the charges made against him by its order dated 26.10.2010. But the respondent Department had denied promotion to the deceased first petitioner on the ground that he was found not fit for promotion to the post of Laboratory Assistant in all the four DPCs. It was further stated in the reply-affidavit that for the representations dated 12.07.2012, 29.08.2012 and 21.02.2013 received from the deceased first petitioner, the first respondent Department had informed him through Memorandum dated 02.03.2013, that he would be considered for promotion to the post of Laboratory Assistant in



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the office of the first respondent as and when vacancy arises. Based on the aforesaid statement made in the reply affidavit, the Tribunal had allowed the said OA by holding that the performance of the deceased first petitioner has not been assessed properly and advance remarks recorded in his ACR have not been communicated to him and further on the basis of the poor assessment, the deceased first petitioner had been denied promotion. Thus, according to the Tribunal, the said assessment is not proper and therefore, the reason as stated by the respondent Department was not accepted by the Tribunal and therefore, the Tribunal had directed the respondent Department to accommodate the deceased first petitioner in the said post immediately in the existing vacancy, if any available.

5. Learned for the second petitioner further vehemently argued that when the relief sought for before the Tribunal was to direct the first respondent Department to promote the deceased first petitioner as Laboratory Assistant with effect from 11.06.2004, the date on which his immediate junior Shanthi was promoted, the Tribunal without considering the same, has simply directed the first respondent Department to



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accommodate the deceased first petitioner immediately in the existing vacancy, if any available. Therefore, the order of the Tribunal is liable to the set aside.

6. Learned Standing counsel appearing for the first respondent Department submitted that disciplinary proceedings were pending against the deceased first petitioner at the relevant point of time and further, he was found not fit for promotion in the ACR reports. Apart from this, in the impugned order dated 02.03.2013, the first respondent Department has specifically informed the deceased first petitioner that, as there was no vacancy then, in the post of Laboratory Assistant, he would be considered for promotion as and when vacancy arises. Considering all these aspects, the Tribunal has passed the order directing the first respondent Department to accommodate the deceased first petitioner immediately in the existing vacancy, if any available. Therefore, there is nothing adverse in the above order of the Tribunal and seeks for dismissal of the writ petition.



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7. We have anxiously considered the submission of the parties and perused the order of the Tribunal and the materials available on record.

8. It is an admitted fact that when promotion panel was drawn by the first respondent Department, the deceased first petitioner was not found eligible for promotion to the post of Laboratory Assistant on the ground that disciplinary proceedings were pending against him and he was subsequently exonerated from the disciplinary proceedings in the year 2010. Thereafter, the deceased first petitioner had made a representation to the first respondent Department to consider him for promotion to the said post on par with his junior Shanthi and to grant him all other reliefs. In the impugned Memorandum dated 02.03.2013, he was informed that, as there was no vacancy then, he would be considered for promotion to the post of Laboratory Assistant, as and when vacancy arises. That order was under challenge before the Tribunal in OA No.1063 of 2013. The Tribunal, by taking note of the fact that the said adverse remarks made in the ACR have not been communicated to the deceased first petitioner and assessment was not done properly by the authority, had disagreed with the stand taken by the



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respondent Department and therefore a direction was given by the Tribunal to the respondent Department to consider him for promotion in the future vacancy. Aggrieved by the same, the instant writ petition has been filed before this Court. In the meantime, the respondent Department has also complied with the said order of the Tribunal by granting promotion to the deceased first petitioner to the said post with effect from 14.07.2017.

9. Now the specific contention of the second petitioner is that the denial of promotion to the deceased first petitioner on par with his junior Shanthi was only on the sole ground that the disciplinary proceedings were pending against him at the time when the promotion panel was drawn to the post of Laboratory Assistant. Admittedly, the said disciplinary proceedings were dropped subsequently on the ground that the charges were not proved against the deceased first petitioner. Further, in the impugned rejection order passed by the first respondent Department, it was not specifically stated that the petitioner's name was not considered on the ground that adverse remarks were recorded in the ACR. The impugned order merely states that his name would be considered in the future vacancy. The Tribunal



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has also rejected the contention of the respondent Department that as the ACR reports reflected the poor performance of the deceased first petitioner, his name was not considered for promotion on par with his junior Shanthi. Though that reason has not been accepted by the Tribunal, it gave a direction to the respondent Department to accommodate the deceased first petitioner immediately in the existing vacancy, if any available. The said order of the Tribunal has also been complied by the respondent Department.

10. In view of the aforesaid discussions, we are of the view that the deceased first petitioner is entitled for promotion to the post of Laboratory Assistant on par with his junior Shanthi with effect from 11.06.2004. Therefore, the order of the Tribunal is liable to be set aside insofar as rejecting the relief of promotion with effect from 11.06.2004.

11. In fine we are inclined to pass order as follows:

i) The impugned order dated 21.09.2016 is set aside and the writ petition is partly allowed;



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ii) We make it clear that the second petitioner being the legal heir of the deceased first petitioner, Ashok Kumar, she is entitled only for the monetary benefits of her deceased husband.

iii) The respondent department is directed to consider and pass appropriate orders by granting notional promotion to the deceased first petitioner on par with his Junior Shanthi and settle all service benefits, including pensionary benefits, without any back wages to the second petitioner, legal heir of the deceased first petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.

12. With the above directions, the writ petition stands partly allowed.

There will be no order as to costs.

[D.K.K., J.] [P.D.B., J.]
31.10.2023

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



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To
The Director,
BCG Vaccine Laboratory,
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Chennai-600032.



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D.KRISHNAKUMAR, J.
and
P. DHANABAL, J.
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