



W.P.(MD)No.6750 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

W.P.(MD)No.6750 of 2018

K.Rajendran

Vs.

... Petitioner

- 1) The State of Tamil Nadu
represented by its Secretary,
Home (Prison -2) Department,
Fort St. George,
Chennai – 600 009.
- 2) The Additional Director General of Police and
Inspector General of Prisons,
Tamil Nadu,
Chennai – 600 008.
- 3) The Deputy Inspector General of Police
Trichy Range,
Trichirappalli.
- 4) The Superintendent of Borstal
School and District Jail,
Pudukkottai

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records



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pertaining to the impugned order of punishment passed by the 4th respondent in Ref.No.5796/Po1/2006 dated 18.09.2006, imposing the punishment of postponement of the petitioner's next annual increment for 3 months without cumulative effect as modified by the 3rd respondent in Ref.No.5700/Mu.Vu/2006 dated 02.12.2006 into one as 'censure' which was further modified by the 2nd respondent in proceedings No. 1407/EW2/2009 dated 13.07.2010 signed by the 2nd respondent on 16.07.2010 by imposing the punishment of postponement of his next increment for one year without cumulative effect, quash the same and consequently direct the respondents to include the name of the petitioner in the approved list of Grade-I Warders issued by the 2nd respondent vide proceeding in Ref.No.23346/ES3/2010 dated 22.11.2010 at the appropriate place and to promote him notionally as Chief Head Warder and as temporary/regular Assistant Jailor from the date on which his juniors were given promotion to those posts with all consequential service and monetary benefits and revised retirement benefits, including revised monthly pension.

(Prayer amended vide order of this Court dated 03.12.2021

in W.M.P.(MD).No.2487 of 2020 in W.P.(MD).No.6750 of 2018).

For Petitioner	:	Mr.A.Rahul
For R1 to R4	:	Mr.S.P. Maharajan Special Government Pleader



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ORDER

This Writ Petition has been filed challenging the impugned order passed by the fourth respondent dated 18.09.2006, imposing the punishment of postponement of the petitioner's next annual increment for 3 months without cumulative effect as modified by the 3rd respondent dated 02.12.2006 into one as 'censure' which was further modified by the 2nd respondent dated 13.07.2010 signed by the 2nd respondent on 16.07.2010, by imposing the punishment of postponement of his next increment for one year without cumulative effect and to quash the same and consequently direct the respondents to include the name of the petitioner in the approved list of Grade-I Warders issued by the 2nd respondent dated 22.11.2010 at the appropriate place and to promote him notionally as Chief Head Warder and as temporary/regular Assistant Jailor from the date on which his juniors were given promotion to those posts with all consequential service and monetary benefits and revised retirement benefits, including revised monthly pension.



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2. The case of the petitioner is that he was appointed as Grade II Warder in the year 1983, at Central Prison, Trichirapalli. His next avenue of promotion is Grade I Warder. Based on G.O.(Ms.).No.63, Home (Prison -II) Department, dated 24.01.2005, the second respondent by proceedings dated 16.11.2005, upgraded 300 posts of Grade II Warder as Grade I Warder and his name as well as the names of his juniors viz., P.S.Sridhar and T.Kanthappathurai were found in the said proceedings. Subsequently, he was upgraded as Grade I Warder with effect from 21.11.2005. After upgradation as Grade I Warder, he was eligible for regular promotion to Grade I Warder. Though vacancies arose in the post of Grade I Warder, his promotion was put on hold. His juniors viz., P.S.Sridhar and T.Kanthappathurai marched over and above the petitioner. He was not promoted as regular Grade I Warder. He was promoted as Chief Head Warder only on 19.09.2012. Whereas, his juniors were promoted as regular Grade I Warder on 11.09.2010 and on 31.08.2010 respectively. They were also further promoted as Chief Head Warder on 05.11.2011 and 01.11.2011 respectively. He was promoted as



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Chief Head Warder subsequent their promotion on 19.09.2012. Further, the above said two individuals were also given further promotion as temporary Assistant Jailor on 30.03.2013 and 22.03.2013 respectively. But he did not attain the promotion of Assistant Jailor. Hence, he has filed a writ petition in W.P.(MD).No.2573 of 2014, to declare the action of the respondents 1 and 2 in not including his name in the approved list of Grade I Warders fit for promotion to the post of Chief Head Warder issued by the second respondent dated 22.11.2010 as illegal and consequently direct the respondents 1 and 2 to include his name in the list of Grade I Warder at the appropriate place and above the place of his juniors and to promote him as a Chief Head Warder and temporary / regular Assistant Jailor from the date on which they were given promotion. However, the said writ petition was disposed of on the ground that the petitioner suffered with the punishment, for which he was not given promotion on par with his juniors. Thereafter, the petitioner came to know that there was a punishment as against him in the year 2006.



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3. It is the further case of the petitioner that he was employed as Grade II Warder as on 01.09.2002 at Borstal School, Pudukotti, which is a correctional centre for Borstal inmates / the convicts over and above aged 17 years. He was allotted with a row house bearing No.28 which was attached to Borstal School, Pudukottai. The residential quarters were not in a habitable condition and residing in such quarters with his family involved in grave risk. Hence, he requested the Superintendent of Borstal School to cancel the allotment. While so, house rent was deducted from the month of June 2006 to November 2006 at the rate of Rs.400/- per month, despite the fact the he did not reside in the said quarters. Hence, he made a representation to the Superintendent of the Borstal School and also marked an advance copy to the second respondent.

4. While so, a charge memo has been issued against him on 05.08.2006, alleging that he spoke to the Office Manager in a loud voice questioning as to why the house rent was deducted from his salary, due to which he could not perform his duty for about 15 minutes. The petitioner



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has submitted his explanation on 21.08.2006, denying the charges.

However, the Superintendent of Borsal School, Pudukottai imposed the punishment of postponement of his next increment for three months without cumulative effect, vide order dated 18.09.2006. The said order was challenged before the appellate authority and the appellate authority has modified the punishment into one of censure, vide order dated 02.12.2006. Challenging the same, the petitioner has preferred a revision petition before the second respondent on 09.01.2009. The second respondent by show cause notice dated 20.04.2010, called upon the petitioner to give explanation. The petitioner has submitted his explanation on 25.05.2010. Without accepting his explanation, the second respondent vide impugned order dated 13.07.2010, enhanced the punishment of censure into one as postponement of increment for one year without cumulative effect. In view of the punishment imposed by the original authority as well as the appellate authority and revisional authority, the promotion to the petitioner was postponed and the juniors of the petitioner were promoted. Challenging the orders of punishment, the present writ petition has been filed.



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5. The learned counsel appearing for the petitioner would submit that admittedly, the disciplinary authority imposed the punishment of postponement of increment for three months without cumulative effect. However, the said punishment was modified into one of censure. Challenging the same, the petitioner has preferred a revision petition before the second respondent on 09.01.2009. The second respondent vide impugned order dated 13.07.2010, enhanced the punishment of censure into one as postponement of increment for one year without cumulative effect, which is not sustainable one. The second respondent has deprived the rights of the petitioner from getting promotion on par with his juniors. The second respondent have no power to enhance the punishment in the revision filed by the petitioner and the said punishment imposed by the second respondent is disproportionate and contrary to the well established procedure. Hence, he prayed for allowing this writ petition.



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6. The fourth respondent has filed a counter stating that the name of the petitioner was not included in the panel fit for promotion to the post of Grade I Warder for the year 2010 – 2011. Hence, the petitioner has filed a writ petition in W.P.(MD).No.2573 of 2014 before this Court to include his name in the approved list of Grade I Warder fit for promotion to the post of Chief Head Warder for the year 2010 - 2011. The persons whose names were found below the name of the petitioner were called to participate in the promotion Board for the selection to the post of Chief Head Warder and Assistant Jailor. The petitioner was not called for to attend the promotion Board, since he has not acted as regular Grade I Warder. The selection for promotion to the post of Assistant Jailor was made by the promotion Board, considering the eligibility on the basis of State wise seniority in respect of higher posts as per rules. Therefore, this cannot be questioned by the petitioner. At the time of preparation of Grade I Warder panel, currency of punishment against the petitioner. Hence, he was not considered for promotion to the post of regular Grade I Warder and he prayed for dismissal of this writ petition.



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7. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents 1 to 4.

8. The facts in the present case are not in dispute. Admittedly, the petitioner was entered into service as Grade II Warder in the year 1983 at Central Prison, Trichirapalli and the subsequent promotion to the post of Grade I Warder. While he was working as Grade II Warder at Borstal School, Pudukottai, a row house was allotted to him. The grievance of the petitioner is that the row house was constructed 200 years ago and the same was not in a habitable condition. Therefore, he has refused to accept the allotment order and made a request to cancel the allotment and the same was questioned by the Manager of the Borstal School and the Manager has also made a complaint against the petitioner stating that he has prevented him to perform official duty for about 15 minutes. Therefore, the Superintendent of Borsal School, Pudukottai imposed the punishment of postponement of his next increment for three months without cumulative effect, vide order dated 18.09.2006. The said order



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was challenged before the appellate authority and the appellate authority has modified the punishment into one of censure, vide order dated 02.12.2006. Challenging the same, the petitioner has preferred a revision petition before the second respondent on 09.01.2009. The second respondent vide impugned order dated 13.07.2010, enhanced the punishment of censure into one as postponement of increment for one year without cumulative effect. However, the Government employee have right to accept the allotment order or reject. When the petitioner made a claim before the officials, it is the duty cast upon the officials concerned to consider the claim of the petitioner and instead of considering his claim, initiated disciplinary proceedings against him and imposed the punishment. Hence, the entire punishment, which was modified by the appellate authority and subsequently enhanced by the revisional authority, is contrary to the well established procedure. Therefore, the punishment imposed by the authorities is liable to be interfered with by this Court. Accordingly, the impugned orders passed by the respondents 2, 3 and 4 are set aside and the respondents are directed to promote the petitioner on par with his juniors and grant all



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monetary benefits within a period of twelve weeks from the date of receipt of a copy of this order.

9. In the result, this Writ Petition is allowed. No costs.

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NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

akv

To

- 1) The Secretary,
Government of Tamil Nadu,
Home (Prison -2) Department,
Fort St. George,
Chennai – 600 009.
- 2) The Additional Director General of Police and
Inspector General of Prisons,
Tamil Nadu,
Chennai – 600 008.
- 3) The Deputy Inspector General of Police,
Trichy Range,
Trichirappalli.



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- 4) The Superintendent of Borstal
School and District Jail,
Pudukkottai



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M.DHANDAPANI,J.

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