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W.P. No.3571 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.3571 of 2021

G.V.Reddy

Vs.

... Petitioner

- 1.The Director General,
Central Industrial Security Force,
CGO Complex,
Lodhi Road, New Delhi – 110 003.
- 2.The Inspector General,
Central Industrial Security Force,
South Sector, Head Quarters,
Chennai Port Trust Campus, Chennai – 600 009.
- 3.The Deputy Inspector General,
Central Industrial Security Force Unit,
Neyveli Lignite Corporation India limited, (NLCIL),
Cuddalore – 607 802.
- 4.The Senior Commandant,
Central Industrial Security Force Unit,
Neyveli Lignite Corporation India Limited, (NLCIL),
Cuddalore – 607 802.
- 5.The Assistant Commandant/G Sector,
Central Industrial Security Force Unit,
Neyveli Lignite Corporation India Limited, (NLCIL),
Cuddalore – 607 802.

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6.The Assistant Commandant/Admn.,
Central Industrial Security Force Unit,
Neyveli Lignite Corporation India Limited, (NLCIL),
Cuddalore – 607 802.

7.The Group Commandant,
Central Industrial Security Force Unit,
Group Head Quarters,
D-Block, Rajaji Bhavan,
Besant Nagar, Chennai – 600 090.

8.The Deputy Commandant,
Central Industrial Security Force Unit,
Salem Steel Plant (SSP),
Salem – 636 013.

9.The Assistant Commandant,
Central Industrial Security Force Unit,
Salem Steel Plant (SSP),
Salem – 636013.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 6th respondent dated 03.02.2020 in his order No.E-31014/Promotion/Admn-1/2020-385 and quash the same and direct the 1st respondent to promote the petitioner as Head Constable/GD with retrospective effect and pay all monetary benefits.

For Petitioner : Mr.R.Thiyagarajan

For Respondents : Mr.T.V.Krishnamachari,
Senior Panel Counsel for Central Govt.



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ORDER

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The petitioner herein, who was appointed as Constable/GD in Central Industrial Security Force (CISF) in the year 1999, was subjected to disciplinary proceedings by issuing a charge memo dated 04.10.2013 basing upon the incident that took place on 13.09.2013. Thereafter, the disciplinary authority passed an order dated 19.10.2013 imposing the punishment of stoppage of one increment for a period of three years without cumulative effect. Aggrieved by the said order of punishment dated 19.10.2013, the petitioner filed appeal and revision petition and then unsuccessfully the petitioner approached this Court by filing W.P.No.23876 of 2014. In the said writ petition, this Court, on having coming to the conclusion that the respondent Disciplinary authority failed to follow mandatory procedure that is required to be followed in the departmental proceedings, allowed the said writ petition by an order, dated 29.04.2019. However, this Court granted liberty to the respondent disciplinary authority to re-initiate the proceedings against the petitioner.

2. Pursuant to the order dated 29.04.2019 passed by this Court, the



respondents issued a fresh charge memo dated 20.08.2019 and after having conducted the enquiry, passed a final order on 12.12.2019 imposing the punishment of withholding of one increment for a period of two years without cumulative effect. It is aggrieved by the said order dated 12.12.2019, the petitioner filed an appeal before the appellate authority.

3. The appellate authority, by an order dated 20.04.2020, remanded the matter back to the disciplinary authority with a further direction to issue a copy of enquiry report and then to pass an order afresh. Thereafter, the 5th responden/Disciplinary authority, passed a final order dated 03.07.2020 reiterating the very same punishment of withholding of one increment for a period of two years without cumulative effect. The validity of the said order dated 03.07.2020, though was assailed by the petitioner, the same attained finality.

4. In the meanwhile, the case of the petitioner was considered for promotion on par with others to the post of Head Constable/GD and in terms of seniority and entitlement, on having considered his case for promotion, an official memorandum dated 19.10.2019 was issued promoting and posting



the petitioner to the rank of Head Constable/GD, however, subject to the producing of certain certificates in respect to the following aspects:

- “i) The Certificate of No DE/Vigilance/Criminal/Sexual Harassment case is either pending or contemplated*
- ii) Certificate regarding awarded the currency of punishment, if any”*

5. Thereafter, having noticed that the disciplinary proceedings were pending and the petitioner has suffered punishment referred to above and he was not extended the benefit of actual promotion pursuant to the official memorandum dated 19.10.2019. Therefore, the petitioner made a claim for promotion in terms of the said Official Memorandum and it is on consideration of the representation submitted by the petitioner the impugned official memorandum dated 03.02.2020 came to be issued by the 6th respondent intimating the petitioner that he has suffered a punishment in terms of final order No (1526) dated 12.12.2019 as amended by an order No (41) dated 09.01.2020 and it is because of the punishment suffered by the petitioner after DPC and before his actual promotion, the case of the petitioner was not considered for promotion. It is aggrieved by the said



official memorandum dated 03.02.2020, the petitioner approached this Court by filing the present writ petition.

6. The respondents have filed counter affidavit contending that the petitioner was facing disciplinary proceedings and also suffered punishment and it is because of the currency of the punishment, the case of the petitioner could not be considered for promotion.

7. The learned counsel for the petitioner contended that the incident basing upon which the disciplinary proceedings in question was conducted relates back to 13.09.2013 and it is because of the fault on the part of the respondents to follow the mandatory procedure that is required to be followed in terms of disciplinary Rules in the matter of imposing a punishment, the said disciplinary proceedings could not be finalised till the year 2020. But for the illegality committed by the respondents in not following the disciplinary procedure, the disciplinary proceedings that were initiated against the petitioner by issuing charge memo dated 04.10.2013 would have concluded long back and, the said disciplinary proceedings would not have come in the way of the petitioner for considering his case for promotion to the post of



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Head Constable/GD in the year 2019.

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8. Thus, it is contended that whatever the punishment that was imposed should be related back to the date of initial charge memo and the same should not be put against the petitioner, as the delay in concluding the disciplinary proceedings is because of the illegality committed by the respondents. He also further contended that the initial order of punishment dated 19.10.2013 was held to be illegal by this Court by an order dated 29.04.2019 and the petitioner cannot be made to suffer for such illegalities committed by the respondents and as such he cannot be denied consideration of his case for promotion on par with his juniors.

9. On the other hand, the learned counsel appearing for the respondents contended that it is only because of the pendency of the disciplinary proceedings and currency of the punishment, the case of the petitioner though considered for promotion, actual promotion could not be given to the petitioner in terms of the rules governing the promotion.

10. This Court has carefully considered the submissions made on



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either side and also perused the entire material on record.

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11. The impugned official memorandum dated 03.02.2020 makes a reference to the final order dated 12.12.2019 and the amended order dated 09.01.2020, as orders of punishment imposed on the petitioner and currency of the said punishment stated to be in operation dis-entitling the petitioner for promotion. But as a matter of fact, as already noted above, the said order dated 12.12.2019 was already set aside by the Deputy Inspector General, Central Industrial Security Force, by an order bearing No.V-15014/CISF/NLC(N)/Disc/GVR/Appeal-02/2020/2913 dated 20.04.2020.

12. There is no dispute that the petitioner was subjected to the disciplinary proceedings in question because of the mis-conduct that was alleged to have been committed by the petitioner on 13.09.2013 and accordingly charge memo dated 04.10.2013 was issued. The disciplinary proceedings were initiated on 04.10.2013 by issuing a charge memo and ended in passing a final order dated 19.10.2013. The said final order dated 19.10.2013 passed by the 9th respondent imposing punishment on the petitioner was found illegal by this Court in W.P.No.23876 of 2014 by an



order dated 29.04.2019.

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13. Thereafter, the respondents issued a fresh charge memo dated 20.08.2019 and the said disciplinary proceedings culminated into passing a final order dated 03.07.2020 that is almost after a period of one year from the date of issuing of fresh charge memo. It is but for the irregularities and illegalities committed by the respondents in passing the original order of punishment dated 19.10.2013, the said disciplinary proceedings would have come to an end against the petitioner in year 2013 itself. Thus, it is the respondents who are responsible for the continuance of disciplinary proceedings or currency of the punishment, when the case of the petitioner came up for consideration for promotion, in his own turn to the post of Head Constable/GD.

14. Therefore, the question that would arise for consideration in this writ petition is whether the petitioner can be denied of his right for promotion in his own turn on par with his junior, because of illegality or irregularity committed by the respondents in the matter of conducting disciplinary proceedings and the delay that is caused in the matter of conclusion of the disciplinary proceedings against the petitioner.



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15. From the facts of the case on hand, there is nothing to show that the petitioner is in any way responsible for the delay in conclusion of the disciplinary proceedings. As seen from the order passed by this Court, in the order dated 29.04.2019 passed by this Court in W.P.No.23876 of 2014, it is evident that it is the respondents who have committed the irregularities in the matter of conducting disciplinary proceedings and the same is also further evident from the order dated 20.04.2020 passed by the 3rd respondent. Further, it is only the respondents who are responsible for the delay in conclusion of the disciplinary proceedings and for currency of punishment that was imposed in the years 2019 and 2020, when the case of the petitioner came up for consideration for promotion on par with his juniors.

16. No doubt, the Rules dealing with promotion would dis-entitle the petitioner for consideration of his case for promotion in the event of either the pendency of disciplinary proceedings or in the event of currency of punishment suffered by the petitioner. But the said Rules dealing with promotion cannot be applied blindly and without application of mind and they cannot be put against the petitioner, when the petitioner is no way responsible for the delay in conclusion of the disciplinary proceedings as



happened in the case on hand.

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17. In the light of the above, but for the lapse of illegalities committed by the respondents, the disciplinary proceedings that were initiated against the petitioner by a charge memo dated 04.10.2013 would have ended long before and the punishment that was ultimately imposed against the petitioner if imposed immediately after issuing a charge memo, the currency of said punishment would have ended long back and that would not have come in the way of the petitioner in consideration of his case for promotion.

18. Therefore, in the considered view of this Court, the illegalities or irregularities that are committed by the respondents should not be allowed to deprive the petitioner of his legitimate claim for promotion on par with his juniors. As already observed above, the case of the petitioner was considered for promotion in his own turn and in his own right he was fit for promotion and an order to that effect was also issued in Official Memorandum dated 19.10.2019.

19. In the light of the above, the impugned Official Memorandum



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dated 03.02.2020 cannot be sustained and the action of the respondents in not promoting the petitioner in terms of the Official Memorandum dated 19.10.2019 either on the ground of pendency of disciplinary proceedings or on the ground of currency of punishment is liable to be declared as illegal, arbitrary and violating the Article 14 and 16 of the Constitution of India. Accordingly, the same is declared as illegal and arbitrary and the impugned Official Memorandum dated 03.02.202 is set aside. Consequently, the respondents are directed to promote the petitioner to the post of Head Constable/GD in terms of the Official Memorandum dated 19.10.2019 as expeditiously as possible at any rate within a period of eight (8) weeks from the date of receipt of a copy of this order, and extend all the consequential benefits notionally including seniority.

20. Accordingly this writ petition is allowed and the connected miscellaneous petitions, if any, shall stand closed. No costs.

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Index : Yes/No
Speaking Order : Yes/No
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MUMMINENI SUDHEER KUMAR,J.

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