



W.P.No.24744 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.11.2023

PRONOUNCED ON : 13.03.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

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S.Muthusamy

...Petitioner

versus

1. The Government of Tamil Nadu,
Represented by the Principal Secretary to Government,
Highways and Minor Ports Department,
Secretariat, Chennai-600 009.

2. The Director General,
Highways, Chennai-600 005.
Formerly Chief Engineer (General)

...Respondents.

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the first respondent to grant notional promotion to the petitioner as Superintending Engineer, on pay with his immediate Junior pursuant to inclusion of his name in the panel for the year 2007-08 for such promotion, approved in G.O.Ms.No.256, Highways (HK-1) Department, dated 24.10.2007 and grant all consequential benefits including revision and pensionary benefits.



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For Petitioner : Mr.M.Ravi

For Respondents : M/s.R.U.Dineshraj Kumar
Additional Government Pleader

ORDER

This Writ petition is filed to direct the first respondent to grant notional promotion to the petitioner as Superintending Engineer and grant all consequential benefits including pay revision and pensionary benefits.

2. The petitioner entered the service as Junior Engineer in the Highways Department on 18.07.1973 and subsequently promoted as Assistant Divisional Engineer on 13.05.1994 and later as Divisional Engineer on 30.09.2004. The crucial date for inclusion of name in the panel for the post of Superintending Engineer was 15.07.2007 and as on that date the petitioner was fully eligible and qualified for inclusion of name in the panel and thus his name was included and the same was approved on 24.10.2007. Subsequently, promotion orders were issued on 03.11.2007 to the juniors but the petitioner was ignored.



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3. The petitioner has submitted that a detailed representation to the first respondent and also issued reminders to redress the petitioner's grievance but no response was received by the petitioner.

4. A charge memo dated 24.10.2007 was served on the petitioner on 29.10.2007. As on the date of approval of the panel no charge was pending against the petitioner. But prior to grant of the promotion, charges were framed against him under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

5. It is submitted by the learned counsel for the petitioner that since the petitioner was eligible to be promoted as Superintending Engineer and that as on the date of approval of panel ie on 24.10.2007 no charges were pending against him, denying the promotion by the respondent on the ground that charges were framed against the petitioner under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules cannot be accepted and that the petitioner should have been given promotion subject to the result of the disciplinary proceedings.



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6. It is submitted by learned Additional Government Pleader that as per G.O.(Ms) No. 368, Personnel and Administrative Reforms Department, dated 18.10.1993 charges pendency of under rule 17(b) is a bar for promotion. It is also contended that according to G.O.(Ms) No. 368, if specific charges are framed before actual promotion, the person concerned shall not be promoted notwithstanding the fact that his name has been included in the panel and therefore, owing to the pending charges under 17(b) against the petitioner, he could not be promoted even though his name was included in the panel.

7. Heard both sides and perused the materials placed on record.

8. The facts in this case is not in dispute. The petitioner who joined the respondent Highways department was eligible to be promoted as Superintending Engineer and accordingly panel was prepared and approved, including the name of the petitioner. When promotion was about to be given, 17(b) charges were issued against the petitioner due to some alleged misconduct, thereby the promotion was denied. According



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to the learned counsel for the petitioner, since the charges were not framed as on the date of approval of the panel for the post of the Superintending Engineer, the petitioner should have been considered for the promotion and that denial of the promotion to the petitioner and giving promotion to his juniors amounts to discrimination.

9. Learned counsel for the respondent on the other hand submits that as per G.O.(Ms) No. 368, Personnel and Administrative Reforms Department, dated 18.10.1993, when charges under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules are pending, promotion was not be given and the relevant portion of above said G.O. runs as under:

“(iv) Consideration of person against whom enquiries are pending and specific charges have been framed or charge sheet has been filed in criminal case-(1) As per orders in the Government Order sixth read above, in the case of pending enquires including Vigilance enquires and in cases where specific charges have not been framed promotions and appointments shall be considered on the



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basis of the performance of the officers coming under the Zone of selecton as on the date of consideration for promotion/appointment as reveiled through the personal Files/Record sheets and the seriousness of the punishments, if any previously imposed. In cases where specific charges have been framed or charge sheet has been filed in criminal case, promotion/appointment of such persons shall be befferred till the proceedings are concluded. They must however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable with reference to all relavant criteria they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.”

10. Inclusion of the name in the panel for promotion as Superintending Engineer will not create any right for the petitioner to demand for giving the promotion. Approval of the panel does not mean that giving promotion. Panel is a list of candidates who are eligible and fit to be promoted as Superintending Engineer. In certain times, even though the number of the persons in the panel is very huge, on account of the fact that there are less number of vacancies most of the employees listed in the panel, may not get promotion eventhough they are eligible.



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Therefore, preparation of the panel is one thing and giving promotion is other thing.

11. Further at the time of promotion, the department will consider as to whether the person to be promoted is eligible in all aspects for consideration of the promotion. In case, if a person who was found to be eligible to be enlisted in the panel, if found to be ineligible for any reason, he/she will not be considered for promotion and that is a reason why always the number of persons in the panel will be more than the number of vacancies. Therefore, merely the petitioner name is included in the panel and merely because the said panel was approved, does not itself create a right for the petitioner to demand the promotion. It is certainly legal position that consideration for promotion is though right of an employee, he has no right for promotion.

12. According to the respondent G.O.(Ms) No. 368, Personnel and Administrative Reforms Department, dated 18.10.1993, person against whom charges under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules have been framed, they are not entitled to be



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promoted. Notwithstanding the fact their names were approved in the panel.

13. The Hon'ble Supreme Court in the judgment decided in ***Union of India and others vs. K.V.Jankiraman and others*** reported in (1991) 4 Supreme Court Cases 109.

“16 On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned



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counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalize the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a, remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows: (ATC P.196, Para 39)

"(1) consideration for promotion, selection grade,



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crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;
(4) The sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before.

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."

14. Considering the above, it is clear that since the petitioner were charged under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the petitioner though was considered for promotion and



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his name included in the panel, on account of the fact that charges under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules were issued, the petitioner cannot be promoted as Superintending Engineer, thereby respondent has rightly not considered the petitioner for promotion for the post of Superintending Engineer.

15. In view of the above, this Writ Petition is dismissed. No costs.

13.01.2024

Index : Yes / No
Speaking/Non-speaking Order
Neutral Citations: Yes/No
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To

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Secretariat, Chennai-600 009.
2. The Director General,
Highways, Chennai-600 005.
Formerly Chief Engineer (General)



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Dr.D.NAGARJUN, J.
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Pre-delivery Order.
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