



W.P.No.36429 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	12.09.2024
Pronounced on	26.11.2024

CORAM :

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

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V.Shankaran

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Home (Police XII) Department,
Secretariat, Chennai – 600 009.

2. Director General of Police,
Post Box No. 601,
Dr. Radhakrishnan Salai, Mylapore,
Chennai – 600 004.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent herein, Government of Tamil Nadu to include the petitioner's service rendered in the Border Security Force as Lance Naik for the purpose of Pension, seniority and promotion and in any event accord the petitioner the benefit of the past service rendered in Border Security Force for the purpose of Pension and accord his seniority in the rank of Head Constable/Lance Naik construing his



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date of entry into service as 05.09.1992, and to give him consequent promotions on par with Head Constable recruited in the year 1992 in the Tamil Nadu Special Police with all consequential benefits.

For Petitioner : Mr.V.Prakash,
Senior Advocate
for Mr. PL.Ravikumar

For Respondents : Mr. P.Muthukumar,
Additional Advocate General
assisted by Mr. S.John J.Rajasingh,
Additional Government Pleader

ORDER

This Writ Petition has been filed to direct the Government of Tamil Nadu, to include the petitioner's past service, in the Border Security Force as Lance Naik for the purposes of pension, seniority, and promotion and in any event accord the petitioner the benefit of past service rendered in the Border Security Force for his seniority in the rank of Head Constable/Lance Naik, construing his date of entry into service as 05.09.1992, and to give him consequent promotions on par with Head Constables recruited in the year 1992 in the Tamil Nadu Special Police, with all consequential benefits.



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2. The learned Senior Counsel appearing for the petitioner would vehemently contend that the petitioner was appointed in the Border Security Force on 27.06.1984 and was subsequently deputed to work in the 13 SRG (Special Range Group) of the National Security Guard since 1989, where he received numerous commendations. It is his further submission that, in the meantime, in order to give commando training to the Tamil Nadu Police, various officers and police personnel including the petitioner, were sent from BSF, on deputation. In this context, the petitioner reported for duty before the second respondent, as per the Movement Order dated 05.09.1992. The learned Senior Counsel further contended that, at the time of deputation, the petitioner held the rank of Lance Naik, but was referred to as a Constable during the deputation. Meanwhile, by virtue of G.O. Ms. No. 672, Home (Police XII Department) dated 28.06.2000, and a letter dated 19.09.2000, the petitioner was absorbed into the Tamil Nadu Police, effective from 28.06.2000.

2.1. It is in this background, the specific contention of the learned Senior Counsel is that, the petitioner was deputed to the Tamil Nadu Police with effect from 05.09.1992. Whereas constables appointed at a later point in



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time, viz., in the year 1997, were promoted to the next level of post prior to him. He would also contend that inspite of the recommendation dated 17.04.204 of the 2nd respondent, the Government did not treat the petitioner's seniority with effect from his initial deputation qua, 05.09.1992, and thereby denied him the promotion and appropriate seniority. Hence, the learned Senior Counsel prayed to treat 05.09.1992 as the petitioner's date of entry into service, for all purpose and the petitioner be granted consequential promotion on par with Head Constables recruited in the year 1992.

3. Per contra, the learned Additional Advocate General appearing for the respondents, would vehemently contend that the petitioner's past service in the Border Security Force had been taken into account for pension and other monetary benefits. Therefore, the date of absorption at a later point of time will in no way affect his pension and other monetary benefits. He further submitted that, on the date of absorption, the petitioner's seniority was fixed at the bottom of the junior most probationer in the Tamil Nadu Special Police as per the settled procedure.

3.1. It is the further submission of the learned Additional Advocate



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General that as on the date of deputation, there were no sanctioned posts to consider the petitioner's seniority, and the post were created only upon the absorption. He would also contend that the instant petition is also liable to be dismissed on the ground of delay and laches. Therefore, he would contend that the petitioner's prayer is not in accordance with law. Hence, prayed to dismiss the instant Writ Petition.

4. I have given my anxious consideration to the submissions made on either side.

5. The first and foremost submission of the learned Senior Counsel is that, the petitioner was deputed to the Tamil Nadu Police Service with effect from 21.01.1992, and that he has been in service since then, and was subsequently absorbed during 2000. From the counter-statement, it reveals that, the petitioner and similarly placed persons had given a representation to the Government to consider their date of their initial deputation to be reckoned for their seniority. It appears that the said representation was rejected as early as on 28.06.2000. There are no records submitted to show any challenge made against the said rejection. Admittedly, the instant writ



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petition has been filed after a lapse of more than 15 years from the date of the above rejection order.

6. The reasons for rejection of their representation are enumerated in the counter-statement at paragraph 8, which reads as follows:-

“8. With reference to the averments made in paras 9 and 10 of the affidavit, it is submitted that the representation of the petitioner and some other absorbed personnel for their permanent absorption with reference to the date of their initial deputation or on completion of 3 or 4 years of deputation in the Tamil Nadu Police has been duly considered and the second respondent addressed the Government to consider their grievance for permanent absorption in the Tamil Nadu Police from the date of their initial deputation into the Tamil Nadu Police Department and issue necessary orders accordingly. After detailed examination, the Government have rejected the proposal in view of the specific orders issued in G.O. (Ms) No. 672, Home (Pol.XII) Department, dated 28.06.2000 based on the following reasons:-

(a) Out of 18 BSF/CRPF personnel absorbed in the Tamil Nadu Special Police during the year 2000, 5 of them got promotion as SI in the year 2010 and 13 of them got promotion as Havildar in the year 2007.

(b) If the seniority of 18 personnel now serving in the rank of SI/Havildar is revised retrospectively with effect from 1992-93, the seniority of serving Tamil Nadu Special Police Personnel will definitely be affected as the deputationists are entitled for further promotions only against the vacancies that arise in the Tamil Nadu Special Police notwithstanding the fact that their continuance of service will be in the Tamil Nadu Commando School/Tamil Nadu Commando Force till their retirement.



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(c) *The Tamil Nadu Special Police Personnel promoted as Sub-Inspector of Police in the year 2003 are yet to be promoted as Inspector. Similarly, the Havildars promoted to the rank in the year 2002 are yet to be elevated as Sub-Inspector of Police.*

(d) *If the BSF/CRPF personnel are absorbed in the Tamil Nadu Special Police from the date of their initial deputation (i.e 1992-93) in the Tamil Nadu Special Police, they will get consequential promotion as Inspector and Sub-Inspector of Police, which will affect the seniority of 415 Sub-Inspectors, promoted to the rank between the years 2003 to 2009 and the seniority of 135 Havildars, promoted to that rank between the years 2002 to 2006.*

(e) *If these personnel are absorbed permanently in the Tamil Nadu Special Police from the date of their initial deputation instead of the date of permanent absorption. The ex-army personnel enrolled in Bomb Disposal and Detection Squad/Dog Squad in the Tamil Nadu commando Force/Tamil Nadu Commando School on contract basis initially and made permanent later may claim the same benefit.*

(f) *No precedent regarding absorption of Border Security Force/Central Reserve Police Force Personnel from the date of initial deputation in the Tamil Nadu Special Police is available.”*

7. In the light of the above reasons, and on account of his silence for more than 15 years, this Court does not find any ground to interfere with such settled seniority, in the writ jurisdiction, inasmuch as this petition is hit by the principles of laches.



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8. It is pertinent to mention here that the petitioner cannot seek promotion as a matter of right. However, while considering the petitioner's contention, it is his case that the second respondent has already recommended to consider the petitioner's seniority from the date of his initial deputation, vide the second respondent's letter dated 17.04.2014. Based on such recommendation, according to the learned Senior Counsel no orders were passed by the Government. In such view of the matter, he would contend that, there is no impediment for this Court to allow the Writ Petition in the light of the above recommendation. However, this Court respectfully disagrees from the submissions made by the learned Senior Counsel as the consideration or otherwise of the administrative recommendation comes within the realm of the Government, and I do not think it to be legal, to pass any order based upon such recommendation.

9. When the Government took a policy decision to absorb the petitioner and other similarly placed persons with effect from 2000, this Court has no authority to interfere with such decision, as the petitioner could not project any ground of irrationality or arbitrary exercise of power. However, considering the peculiar circumstances of this case, more specifically, since



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the petitioner was deputed to the Tamil Nadu Police only at the request of the Government to strengthen the Commando Force, I deem it appropriate to direct the first respondent to consider the recommendation if any made by the second respondent, vide letter dated 17.04.2014.

10. In view of the same, though this Court does not find any merits in the Writ Petition, is inclined to issue a direction to the first respondent to consider the recommendation of the second respondent dated 17.04.2014, if any, and not considered so far, within a period of twelve weeks from the date of receipt of a copy of this order.

11. In the result, this Writ Petition is disposed of with the aforesaid observations. No costs.

26.11.2024

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Index : Yes/No

Speaking order /Non Speaking Order

Neutral Citation : Yes/No

To

1. The Secretary,
The Government of Tamil Nadu,
Home (Police XII) Department,
Secretariat, Chennai – 600 009.
2. The Director General of Police,
Post Box No. 601,
Dr. Radhakrishnan Salai, Mylapore,
Chennai – 600 004.



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C.KUMARAPPAN, J.

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