



W.P. No. 14142 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 14142 of 2018

and

W.M.P. No. 16710 of 2018

P.N. Raghukumar

... Petitioner

Vs.

- 1.The Principal Secretary to Government,
Public [Special.A] Department,
Secretariat, Chennai – 9.
- 2.The Principal Secretary to Government,
Revenue Department, Secretariat,
Chennai – 9.
- 3.The Principal Secretary/Commissioner of
Revenue Administration,
Disaster Management and Mitigation Department,
Chepauk, Chennai – 5.
- 4.The District Collector,
Krishnagiri.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the first respondent vide Letter No.1775/A4/2017 dated 02.02.2018 and to quash the same and consequently direct the first respondent to include the petitioner's name in the panel of District Revenue Officer for the year 2017 below P.K.Periathambi [Sl.No.26] above P.Kumareswaran [Sl.No.27].



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For Petitioner : Mr. S. Vijayakumar
For Respondents : Mr. L.S.M. Hasan Fizal,
Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents and carefully examined the material available on record.

2. It is an admitted fact that, the crucial date for District Revenue Officer panel for the year 2017 is 01.04.2017. It is also an admitted fact that, as on that day no charges are framed against the petitioner. The charge memo was signed on 27.12.2017 and it was sent to District Collector, Krishnagiri on 09.01.2018 and it is served on the petitioner on 24.01.2018. As such, it is clear that the charge memo was issued subsequent to the crucial date of preparing the panel of District Revenue Officer for the year 2017.

3. It is also an admitted fact that, the petitioner challenged the said charge memo dated 27.12.2017 before this Court in W.P. No. 15332 of 2018. The said writ petition was dismissed by this Court by its order dated 21.02.2019, holding that the petitioner has to participate in the process of enquiry and cooperate for the earlier disposal of enquiry proceedings. While dismissing the said writ petition, this Court



also made it clear that, the Disciplinary Authority must ensure that all such proceedings are concluded without causing undue delay. The Departmental Disciplinary proceedings are to be concluded at the earliest possible in order to avoid further denial of service benefits to the officials. This Court also held that the earlier disposal of the Departmental Disciplinary Proceedings are also imminent. The Court also granted liberty to the disciplinary authority if, in the event of any non-cooperation on the part of the petitioner, the same shall be recorded by the enquiry officer as well as disciplinary authorities in the proceedings itself. But very strangely, the respondents did not mention about the status of the disciplinary proceedings pending against the petitioner in their counter affidavit. The silence of the respondents on this aspect in their counter has to be construed that the disciplinary action initiated against the petitioner is still pending, is not concluded till date. The respondents are not permitted under any law to continue the disciplinary proceedings years together, which will cause, definitely, irreparable loss and hardships to the delinquent employees, like the petitioner.

4. Learned counsel for the petitioner has placed reliance on the order in *A. Kalaiselvan v. State of Tamil Nadu* reported in **2016 (3) LNN 740** wherein, it is held that, when there is no currency of punishment on the crucial date, the subsequent charge memo cannot be a bar for promotion. The relevant paragraph is extracted



herein under: -

“8. A mere reading of the above said judgment clearly depicts that when there is no currency of punishment on the crucial date, the subsequent charge memo cannot be a bar for promotion. Therefore, in the case on hand, as stated above, the subsequent charge memo issued against the petitioner after the crucial date cannot stand as a bar for promotion to him. Thus, the impugned proceedings of the respondent in denying to consider his case for promotion citing pendency of a charge memo is unsustainable in law. However, it is also made clear that the petitioner will have to cooperate with the authorities to complete the disciplinary proceedings pending against him in accordance with law.”

5. Learned counsel for the petitioner also placed reliance on the part of this Court in ***P. Stanley Paulraj v. State of Tamil Nadu*** reported in **2013 (7) MLJ 161** wherein, it is held that, the first respondent therein was therefore not justified in denying promotion to petitioner on the ground of initiation of disciplinary proceedings, after the crucial date. The relevant paragraph of the said order is extracted herein under: -

“13. The crucial date in this case has to be taken as 14 December 2011, the date on which Thiru Krishnamoorthy Sugumar, junior to the petitioner in the Engineering service was given promotion as Superintending Engineer. There was no charge memo pending against the petitioner as on the date on which his junior was



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given promotion. The representation given by the petitioner on 21 December 2011 to consider him for further promotion was kept in cold storage. It was only when this Court directed the first respondent to consider the case of the petitioner vide order dated 13 June 2012 in W.P.No.10828 of 2012 the representation was taken up for consideration. It is a matter of record that only after this Court directed consideration of the case of the petitioner for promotion, the second respondent has issued the charge memo on 24 August 2012. Therefore it is evident that either on the date of promotion of the junior of petitioner on 14 December 2011 or on the date on which representation was made for promotion and the direction issued by this Court for consideration of his case, there was no charge memo pending so as to deny him promotion. The charge memo issued long after the crucial date cannot be the reason to deny legitimate promotion.

14. The Supreme Court in **Union of India & Ors. v. Sangram Keshari Nayak (2007) 4 Supreme 246** held that the right to be considered for promotion is a fundamental right and such a right brings within its purview, an effective, purposeful and meaningful consideration. The Supreme Court in **Sangram Keshari Nayak** found that on the day on which the Departmental Promotion Committee held its meeting, no vigilance enquiry was pending against the employee. The charge sheet was issued only after the Departmental Promotion Committee meeting. The Supreme Court upheld the order passed by the High Court directing the Government to promote the employee to the higher post from the date when his junior was promoted, notwithstanding the subsequent initiation of vigilance proceedings.



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15. *The first respondent was therefore not justified in denying promotion to the petitioner on the ground of initiation of disciplinary proceedings after the crucial date.*”

6. While dealing with an identical case, the Apex Court in ***Union of India and Ors v. Sangram Keshari Nayak*** reported in **(2007) 4 Supreme 246** held as extracted herein under: -

“the right to be considered for promotion is a fundamental right and such a right brings within its purview, an effective, purposeful and meaningful consideration. The Supreme Court in Sangram Keshari Nayak found that on the day on which the Departmental Promotion Committee held its meeting, no vigilance enquiry was pending against the employee. The charge sheet was issued only after the Departmental Promotion Committee meeting. The Supreme Court upheld the order passed by the High Court directing the Government to promote the employee to the higher post from the date when his junior was promoted, notwithstanding the subsequent initiation of vigilance proceedings.”

7. While dealing with a case in an identical circumstances, this Court in ***K. Karhikeyan v. Indian Oil Corporation Limited and Others*** reported in **2015 (1) MLJ 813**, it is held that, merely because an informal enquiry is initiated against an alleged incident and the same is at the preliminary stage, an employee cannot be denied promotion. The relevant paragraphs of the said judgment are extracted herein



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“6. The facts as narrated above are not in dispute. Admittedly, at the time of either drawing the panel and thereafter, there was no departmental proceedings initiated against the petitioner. Perhaps, that is the reason why, though the petitioner was considered for a promotion, his name has been kept in the sealed cover. The tentative decision was taken only on 19.03.2013. Even the said decision is not against any Officer, as it made to probe into certain incident alleged to have been happened in the department. The Central Bureau of Investigation has also closed its report on 30.03.2013. It is also not in dispute that the persons juniors to the petitioner have been promoted. His placement in the juniors is also not disputed, as he had obtained 86.690 marks. It is settled law that in a departmental proceedings, the initiation would start with the issuance of charge memo. In the absence of any initiation by way of such issuance of a charge memo, an officer cannot be denied promotion. The issue involved in this writ petition is no longer *res integra*. Considering the same, the Supreme Court, in **Union of India Vs. Anil Kumar Sarkar**, MANU/SC/0240/2013 : (2013) 4 SCC 161, was pleased to hold after relying upon the earlier decisions rendered in **Coal India Ltd. Vs. Saroj Kumar Mishra**, (AIR (2007) SC 1706), **Chairman cum Managing Director, Coal India Limited and others V. Ananta Saha and Others** (MANU/SC/0364/2011 : (2011) 5 SCC 142), **Union of India Vs. K.V. Jankiraman** (MANU/SC/0445/1991 : (1991) 4 SCC 109) and **Uco Bank V. Rajinder Lal Capoor** (MANU/SC/7810/2007 : (2007) 6 SCC 694), as follows:

“17. In para 17, this Court further held:



**(Union of India v. K.V. Jankiraman,
MANU/SC/0445/1991 : (1991) 4 SCC 119)**

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"17. Conclusion 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.

After finding so, in the light of the fact that no charge sheet was served on the respondent-employee when the DPC met to consider his promotion, yet the sealed cover procedure was adopted. In such circumstances, this Court held that (K.V. Janikiraman case, SCC p.124, para 32)

32....The Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date of his immediate junior Shri M. Raja Rao was promoted pursuant to the order dated April 30, 1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits. We see no reason to interfere with this order. The appeal, therefore, stands dismissed."

7. In view of the above said pronouncement, the legal position is very explicit that merely because an informal enquiry is initiated against an alleged incident and the same is at the preliminary stage, an employee cannot be denied promotion. Therefore, in the light of



the said pronouncement, this Court is of the view that the petitioner is entitled to succeed.”

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8. On perusal of the orders relied on by the learned counsel for the petitioner, it is clear that it is settled law that in a departmental proceedings, the initiation would start with the issuance of charge memo. In the absence of any initiation by way of such issuance of a charge memo, an officer cannot be denied promotion. Infact, the issue involved in this writ petition is no longer res-integra. The Apex Court and this Court, time and again held that the action of the Government officials is not justified in denying promotions to the delinquent employees on the ground of initiation of disciplinary proceedings after the crucial date. In the present case, admittedly, charge memo was served on the petitioner subsequent to the crucial date.

9. Thus, in the considered opinion of this Court, the action of the respondents in not including the name of the petitioner in the panel of District Revenue Officers for the year 2017 is unjustified, illegal and irrational.

10. Accordingly, this Writ Petition is allowed.

11. Consequently, the respondents are directed to include the petitioner's name in the panel of District Revenue Officers for the year 2017 at the appropriate place to



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which, he is eligible and grant promotion with all consequential benefits, within a period of six weeks from the date of receipt of copy of this order.

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12. This Court is placing its displeasure on record towards the inaction of the disciplinary authority concerned in the present case for not concluding the disciplinary proceedings for around 7 years after initiation of disciplinary proceedings against the petitioner and even after specific direction from this Court to complete disciplinary proceedings as expeditiously as possible in the order dated 21.02.2019 in W.P. No. 15332 of 2018.

13. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

11.12.2024

Index :Yes/No

Neutral Citation :Yes/No

AT

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BATTU DEVANAND, J.

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