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W.P.No.16060 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.12.2023

DELIVERED ON: 18.03.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.DHANABAL

W.P.No.16060 of 2023
and WMP.No.15486 of 2023

Promod Kumar, I.P.S.

.. Petitioner

Vs.

1.State of Tamil Nadu,
Represented by Additional Chief Secretary,
Home (SC) Department, Fort St.George,
Secretariat, Chennai-600 009.

2.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai-600 104.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the 2nd respondent in its order dated 27.04.2023 made in OA.No.131 of 2022, quash the same and consequently allow the OA as prayed for.

For Petitioner : Mr.P.S.Raman, Senior Counsel and
Mr.C.Manishankar, Senior Counsel
for Mr.Arun C.Mohan



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For Respondents : Mr.S.Silambanan,
Additional Advocate General
assisted by
Mr.K.H.Ravi Kumar,
Government Advocate for R1

Tribunal - R2

ORDER

D.KRISHNAKUMAR, J.

Challenge in the writ petition is to the order of the Central Administrative Tribunal, Chennai dated 27.04.2023 made in O.A.No.131 of 2022, in and by which the petitioner's claim for promotion as Additional Director General of Police [hereinafter referred to as "ADGP"] and further promotion to the rank of Director General of Police [hereinafter referred to as "DGP"] on par with his batch-mates with all consequential monetary benefits came to be dismissed.

2. Facts in brief necessary for the disposal of the writ petition are as follows:

2.1. The petitioner belongs to 1989 batch of IPS Officers of the Tamil Nadu cadre and holds the rank of Inspector General of Police. While the petitioner was serving as Inspector General of Police, West Zone, a case in Crime No.26 of 2009 was registered under the Prize Chits



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and Monies Circulation Schemes (Banning) Act, 1978 and under Section 420 of Indian Penal Code against the Directors of M/s.Paazee Forex Trading. Pursuant to the orders of this Court, the Superintendent of Police, Tiruppur was directed to ensure repayment of monies due to the depositors by the accused directors. A committee was also constituted for that purpose and huge amounts were returned to the depositors.

2.2. On 08.12.2009, a complaint was made to Tirupur North Police Station that one of the accused Directors Mrs.Komalavalli Arumugam was missing. The said complaint was given by the driver of the accused, which was subsequently converted as Crime No.3068 of 2009 for "Woman Missing" on 09.12.2009. Few days thereafter, the missing director was surfaced on 11.12.2009 and she stated that she had gone on pilgrimage and no action was required on the complaint.

2.3. According to the petitioner, on 14.02.2010, the said missing director made a contradictory statement that she had been kidnapped and certain police officers sought to extort money, without mentioning in the



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complaint the police officers, who had attempted extortion. Accordingly, the FIR was changed from "Woman Missing" to "Kidnapping".

2.4. The Crime No.3068 of 2009 was transferred to Crime Branch CID and on further investigation, the allegations of kidnapping and ransom was found false and when confronted with evidences, the accused Director Komalavalli Arumugam changed her version and stated that the complaint of kidnapping and ransom was false and made a complaint of extortion and bribery. CBCID filed a report before the Chief Judicial Magistrate, Coimbatore altering the case from kidnapping to extortion and under the provisions of Prevention of Corruption Act. According to the petitioner, in none of those statements, the said Komalavalli has mentioned the name of the petitioner. Hence, he was not arrayed as accused in either of the two proceedings.

2.5. The depositors filed CrI.O.P.Nos.2691 & 5356 of 2011 before this Court under Section 482 CrPC seeking transfer of investigation in Crime No.26 of 2009 to the file of the Superintendent of Police, Central Bureau of Investigation and this Court, vide orders dated 19.04.2011, based on the submission made by the counsel for Central Bureau of



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Investigation [in short "CBI"], also transferred the Crime No.3068 of 2009 along with Crime No.26 of 2009 to CBI.

2.6. On transfer of investigation, CBI registered fresh FIRs in both matters, conducted investigation and subsequently implicated the petitioner as accused No.6 in Crime No.3068 of 2011, registered as RC.No.13/E/2011 dated 28.02.2012. The petitioner was arrested on 02.05.2012 and detained in judicial custody for more than 48 hours and therefore, the first respondent issued G.O.Ms.No.341 dated 10.05.2012 placing the petitioner under deemed suspension with effect from 02.05.2012.

2.7. The petitioner filed W.P.No.21801 of 2012 before this Court seeking to restrain CBI from investigating the FIR in RC.No.13/E/2011. The said writ petition was dismissed and the same was also confirmed on appeal by a Division Bench of this Court. Challenging the order of the Division Bench, an appeal was filed before the Hon'ble Supreme Court in SLP(c)No.17999 of 2013.



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2.8. Challenging the the order of this Court in CrI.O.P.Nos.2691 and 5356 of 2011 transferring the investigation of Crime No.26 of 2009 to CBI, SLPs were filed in SLP(CrI.)Nos.2333 & 2334 of 2015 and it was tagged along with SLP (C)No.17999 of 2013. The Hon'ble Apex Court, vide common order dated 17.03.2015, while setting aside the order passed in the writ petition, held that the order dated 19.04.2011 transferring the case to CBI was in violation of the principles of natural justice and directed the writ petition to be heard afresh and both the Criminal Original Petitions should be heard afresh after impleading the petitioner and while deciding the writ petition afresh, the order passed in CrI.O.Ps. transferring the case on 19.04.2011 will not stand in the way.

2.9. On 13.08.2015, in a collateral proceedings in CrI.Rc.No.838/14, this Court by referring to the order of the Hon'ble Apex Court passed in Civil Appeal No.3062/2015, arising out of the above two SLPs, filed by the petitioner, held that the order transferring the case to CBI has been set aside and remanded back to this Court.



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2.10. Crime No.2 of 2013 (arising out of RC.No.13/E/3011) has also been closed on 19.10.2015 by the CBI Special Court, Coimbatore, taking into account the order of the Hon'ble Supreme Court, subject to further order to be passed by this Court in CrI.O.P.Nos.2691 & 5356 of 2011 and W.P.No.21801 of 2012.

2.11. In the meanwhile, disciplinary proceedings were also initiated against the petitioner on 29.10.2013 under Rule 8 of the All India Service (Discipline & Appeal) Rules, 1969. The articles of charges framed were entirely based on the investigation done by CBI and the report submitted by CBI to the State Government in RC.No.13/E/2011, As the jurisdiction by the CBI on the strength of the transfer order has been set aside by the Hon'ble Apex Court, the petitioner made representations to the respondent seeking for revocation of the order of deemed suspension.

2.12. The petitioner's prospects for Additional Director General of Police along with his 1989 batch of IPS officers was kept in a sealed



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cover due to pendency of the criminal proceedings and departmental proceedings and his juniors were given promotion on 25.02.2014.

2.13. The petitioner filed O.A.No.165 of 2016 before the Central Administrative Tribunal, Chennai, challenging the prolonged suspension, which was allowed by the Tribunal on 09.08.2016, revoking the order of suspension. The order of the Tribunal was also affirmed by this Court and further quashed the charge memo dated 29.10.2013, which was also affirmed by the Hon'ble Apex Court.

2.14. The CBI has clarified vide letter dated 20.11.2019 that the charge sheet in the criminal case was not served on the petitioner and by relying upon the same, the petitioner contends that no criminal proceedings said to be pending in terms of the All India Service (D&A) Rules, 1969 and notwithstanding the above, the petitioner was not promoted although promotions have been granted to juniors belonging to subsequent batches upto 1996 and infact, the 1989 batch of IPS officer has been given further promotion as Director General of Police on



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2.15. The respondent issued a fresh charge memo dated 10.11.2021 after a lapse of 3 years when the earlier charge memo dated 29.10.2013 was rescinded in 2018 based on the orders of the Hon'ble Apex Court. The petitioner made representations to the respondent for regular and adhoc promotion since 2017, but there was no response. Hence he filed O.A.No.131 of 2022 initially seeking adhoc promotion and subsequently amended the prayer for regular promotion from 2016, by opening the sealed cover of the petitioner. The original application was dismissed by the Tribunal, vide order dated 02.05.2023 and challenging the same, the present writ petition has been filed.

3. A counter affidavit has been filed on behalf of the first respondent, wherein the first respondent opposed the contentions of the petitioner as follows:

(i) The petitioner cannot claim promotion as a matter of right and it is not the case where his promotion was overlooked due to some error or other reasons, which can be



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gone into by this Court. The issue involved in this case is serious offences in which the petitioner's involvement has given rise to issuance of charge memo.

(ii) A mere perusal of the charge memo would reveal the seriousness of the charge memo and the sensitivity of the issue involved. All the 11 charges are of very serious in nature.

(iii) The petitions of the depositors in respect of Crime No.26/2009 registered by CCB, Tiruppur on 24.09.2008, were marked to the Deputy Superintendent of Police, Tiruppur Town instead of Superintendent of Police, Tirupur, who was the chairperson of the Committee for disbursal of amount to the depositors and hence, the averment that several crores recovered from the accused Directors and distributed to the depositors under the supervision of the applicant herein as Inspector General of Police, is incorrect.

(iv) As regards Crime No.3068 of 2009 registered on 09.12.2009 on the complaint of Karunakaran, an employee of M/s.Paazee Forest Trading India (p) Ltd., Tiruppur stating that Tmt.Komalavalli was missing since 21.30 hours on 08.12.2009 at Tiruppur, the said Komalavalli has approached



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the Superintendent of Police, Tiruppur District with an allegation that she was kidnapped by police and that they obtained more than Rs.3 Crores from her and that the amount was shared by higher officials including the petitioner and hence the averment of the petitioner that there are no complaint against him is incorrect.

(v) As the petitioner was under continued suspension and due to the pendency of criminal case as well as the departmental proceedings against him, the petitioner's case for promotion as ADGP was kept in a sealed cover.

(vi) The petitioner filed O.A.No.165/2016 before the Central Administrative Tribunal, Madras Bench, challenging the departmental / disciplinary proceedings against him and his continued suspension. The Tribunal, vide order dated 09.08.2016, has revoked his suspension and directed to reinstate him in any of the non-sensitive post. Challenging the above order, the Government filed W.P.No.38696 of 2016 and the petitioner also filed W.P.No.39989 of 2017 before this Court and this Court, vide common order dated 12.01.2017, while confirming the order passed by the Tribunal revoking the suspension, quashed the charge memo issued against him. Challenging the above order, SLP(C)Nos.12112 and 12113 of 2017 were filed before the Hon'ble Apex Court and vide order



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dated 21.08.2018 in SLP(C) Nos.12112 and 12113 of 2017, while confirming the orders of the High Court, has granted liberty to issue a charge memo afresh after taking approval from the disciplinary authority. Hence, the earlier charge memo dated 29.10.2013 was rescinded and a fresh charge memo was issued on 10.11.2021 under Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969, after obtaining due approval from the disciplinary authority. The suspension of the petitioner was reviewed by the Review Committee and on its recommendation only, the suspension was extended and therefore, the averment that the suspension of the petitioner was continued mechanically is incorrect.

(vii) After the Departmental Promotion Committee held in 2014, the petitioner was considered in all the Screening Committee meetings held for empanelment of IPS officers fit for promotion to the grade of Additional Director General and Director General of Police. After the year 2014, the name of the petitioner was considered for empanelment, however the Screening Committee recommended to keep the findings in respect of the petitioner in a sealed cover. Hence, his case could not be compared with other officers.

(viii) In the case of Thiru Jaffar Sait, IPS, no charge sheet has been served on the officer as prosecution in all the



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charge sheets have been quashed by the CAT and there being no stay by the Hon'ble Apex Court, the decision in ***Union of India v. K.V.Kanakiraman's case [(1991) 4 SCC 109]*** would squarely apply and that there would be no impediment for empanelment of Thiru M.S.Jaffar Siat, IPS for the grade of DGP and hence, he was empanelled to the rank of DGP on 10.01.2019 and promoted as DGP on 19.01.2019 based on the findings of the Screening Committee.

Whereas in the case of the petitioner, the CBI, EOW, Chennai has laid charge sheet in the Court of Special Judge for CBI cases, Coimbatore on 22.05.2013 against the petitioner and 4 others. The petitioner did not appear before the CBI Court on 08.07.2013 on account of the interim stay granted by the Hon'ble Apex Court and therefore, he was not supplied with the copy of documents as per Section 207 CrPC.

4. Mr.P.S.Raman, learned Senior Counsel appearing for the petitioner has put forth the following contentions:

4.1. There is no legal impediment for effecting regular promotion to the petitioner as ADGP from 09.08.2016 till 10.11.2021 and the sealed cover procedure envisaged under DOPT memorandum dated 14.09.1992 is not attracted for the



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above period for the following reasons:

(i) The petitioner was not under suspension during the aforesaid period.

(ii) The departmental proceedings dated 29.10.2013 was declared as void abinitio and non-est in law by this Court on 12.01.2017.

(iii) The criminal proceedings cannot be said to be pending since the charge sheet in the same was not served on the petitioner as required under Section 207 CrPC nor charges were framed under Section 240 CrPC.

However, the Tribunal has failed to consider the above facts.

4.2. The relief sought for is for opening the sealed covers from the year 2016, which procedure was adopted citing the pendency of the legal proceedings and once the above issues attained finality as per the orders of the Hon'ble Apex Court, the legal impediment for the above referred period ceased to exist.

4.3. Heavy Reliance has been placed upon the decision of the Hon'ble Apex Court in *Union of India and Others v. K.V.Jankiraman and Others [(1991) 4 SCC 109]* for the proposition that the sealed cover procedure can be applied only when a charge memo / charge sheet in a departmental /



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criminal proceedings are issued to the charged officer.

4.4. Even assuming without admitting that the final report made under Section 173 CrPC is to be considered as the charge sheet, the same is issued to the charged officer only under Section 207 CrPC and in the instant case, the charge sheet was served only in February 2022 and the said fact has been confirmed by the CBI by its letter dated 20.11.2019.

4.5. Relying upon the decision of the Hon'ble Supreme Court in ***Union of India v. Dinanaath Shantaram Karekar [(1998) 7 SCC 569]***, wherein it was held that the actual service of the charge sheet is essential and applying the said principle one Mr.Jaffar Sait IPS has been granted promotion as DGP on 19.01.2019 during the pendency of C.C.No.25 of 2019 on the file of the Special Court under the Prevention of Corruption Act, Chennai on the premise that charge sheet in the criminal proceedings has not been served on him and the charge sheet could not be served because of the stay granted by this Court. The petitioner herein also stands on similar footing since he has also did not appear before the criminal court due to the stay granted by the Hon'ble Apex Court and charge sheet was not served on him under Section 207 CrPC.



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5. Mr.S.Silambanan, learned Additional Advocate General appearing for the first respondents has drawn the attention of this Court to the counter affidavit filed by the first respondent and contended that the respondent has followed the guidelines strictly in the case of the petitioner and since the criminal as well as the departmental proceedings are pending against the applicant, sealed cover procedure was adopted and he was not considered for promotion by the Screening Committee. It is further contended that since the allegations made against the petitioner are serious in nature, the Hon'ble Supreme Court while confirming the order of the High Court, quashing the earlier charge memo, has granted liberty to the respondent to issue fresh charge memo after obtaining necessary approval and the respondent have also complied with the said order and therefore, the claim of the petitioner is legally unsustainable and prayed for dismissal of the writ petition.

6. This Court has given anxious consideration to the rival submissions and also perused the materials available on record.



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7. The primordial contention of the petitioner is that his prospects for promotion as ADGP, along with his batch of IPS officers of the year 1989 of this cadre, was kept in a sealed cover due to pendency of criminal proceedings and departmental proceedings, but his batchmates and juniors were promoted as ADGP on 25.02.2014.

8. The fact remains that the petitioner belongs to 1989 batch of IPS Officers of the Tamil Nadu cadre and holds the rank of Inspector General of Police. He has been implicated in a criminal case, pursuant to which departmental proceedings continued, which led to adoption of sealed cover procedure by the respondent and therefore, the respondent did not consider the claim of the petitioner for promotion as ADGP and DGP.

9. Let this Court analyze the sequence of factual events that took place in the criminal as well as departmental proceedings initiated as against the petitioner in order to determine whether there is any legal impediment to consider the claim of the petitioner for promotion as ADGP and DGP from the year 2014, till the filing of the original



CRIMINAL PROCEEDINGS

9.1. **Crime No.26 of 2009:-** This criminal case was registered by the petitioner against the Directors of Paazee Forex Trading under Sections 3 and 4 of the Price Chits and Monies Circulation Schemes (Banning) Act, 1978 and under Section 420 of Indian Penal Code.

9.2. **Crime No.3068 of 2009:** This criminal case was registered on 09.12.2009 under "Women Missing" towards missing of Mrs.Komalavalli Arumugam, Director of Paazee Forex Trading. The said Director was traced and based on the statement given by her that she was kidnapped and money was extorted by higher officials including the petitioner, who was the Inspector General of Police, West Zone during the period. Subsequently, the Sections were altered to Sections 353, 365, 384, 354 of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. The petitioner was arrayed as 6th accused in the said case.



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9.3. Few depositors filed Crl.O.P.Nos.2691 and 5356 of 2011 before this Court and vide order dated 19.04.2011, both the aforesaid 2 Crime Numbers were directed to be investigated by Central Bureau of Investigation, New Delhi (CBI). Subsequently the following crime numbers were assigned by CBI on 15.06.2011. Cr.No.26 of 2009 was renumbered as RC.12/3/2011-CBI/EOW, Chennai. Cr.No.3068 of 2009 was renumbered as RC.13/E/2011-CBI/EOW, Chennai.

9.4. ***On 22.05.2013 - Charge Sheet was filed in RC.13/E/2011 [in which the petitioner is arrayed as Accused No.6] before the Special Court, CBI cases, Chennai.*** On 19.10.2015, Special Court for CBI, Coimbatore has passed orders that in view of the orders passed by the Hon'ble Apex Court in C.A.No.3062/2015 and by this court in the collateral proceedings in Crl.Rc.No.838/2014, CC.No.2/2013 has been closed for the present, subject to the orders passed by the High Court in W.P.No.21801/2012 and Crl.O.P.Nos.2691 and 5356 of 2011.



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9.5. W.P.No.21801/2012 was filed by the petitioner, challenging the transfer of investigation of the cases to CBI. The writ petition was dismissed on 05.12.2012, against which W.A.No.12 of 2013 was filed by the petitioner, which was also dismissed on 29.04.2013. The petitioner filed SLP No.17999 of 2013 before the Hon'ble Apex Court and vide order dated 17.03.2015, the Hon'ble Supreme Court remanded the matter to High Court to adjudicate upon W.P.No.21801/2012 afresh, by impleading the petitioner as one of the respondents in Crl.O.P.Nos.2691 and 5356 of 2011, by affording opportunity to the petitioner and set aside the order dated 05.12.2012 passed in the writ petition. The petitioner was impleaded on 08.01.2016 in the aforesaid Crl.O.Ps. ***This Court, vide common order dated 02.11.2021, dismissed the writ petition filed by the petitioner and held that the investigation done by CBI is sustained.***

9.6. During February 2022, the Charge Sheet in the criminal case was served on the petitioner under Section 207 CrPC.



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DEPARTMENTAL PROCEEDINGS

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9.7. On 02.05.2012, the petitioner was arrested by CBI for his implication in the aforesaid crime No.3068 of 2009. He was placed under deemed suspension with effect from 02.05.2012, for his detainment in judicial custody for more than 48 hours.

9.8. On **29.10.2013 - Charges under Rule 8 of All India Service (Discipline & Appeal) Rules, 1969 was framed against the petitioner.**

9.9. O.A.No.3656/2013 was filed by the petitioner before the Central Administrative tribunal, Delhi to set aside G.O.Ms.No.583, Home (SC) Department date 27.07.2012, extending the suspension of the petitioner for 180 days beyond 30.07.2012. The Tribunal, vide order dated 14.07.2014, has directed the petitioner to file a review application and it was considered by the review committee, which extended his suspension.

9.10. O.A.No.165/2016 was filed by the petitioner, challenging the initiation of departmental proceedings and his continued suspension. **On**



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09.08.2016, Central Administrative Tribunal, Chennai, revoked his suspension and directed to reinstate him in any of the non-sensitive post. Challenging the same, the Government filed W.P.No.38696 of 2016 and the petitioner filed W.P.No.39989 of 2016 before this Court. This Court, vide common order dated 12.01.2017, while confirming the order of the Tribunal revoking the suspension, quashed the charge memo issued against him.

9.11. On appeal by the Government before the Hon'ble Apex Court in SLP(C)Nos.12112 and 12113 of 2017, vide order dated 21.08.2018, the Hon'ble Apex Court, while confirming the orders of the High Court, has also granted liberty to the department to issue a charge memo afresh, after obtaining approval from the Disciplinary Authority. ***Hence, the earlier Charge Memo dated 29.10.2013 was rescinded and the petitioner was reinstated into service vide G.O.Ms.No.1416, Home (SC) Department, dated 05.09.2018.*** The date of revocation of the suspension was revised from 05.09.2018 to 09.08.2016 in G.O.Ms.No.450, Home (SC) Department dated 28.08.2019. ***Thus the revocation of the suspension was with effect from 09.08.2016 and the petitioner was***



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reinstated into service on 05.09.2018.

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9.12. On 10.11.2021, the earlier charge memo dated 29.10.2013 was rescinded, though the order of the Hon'ble Apex Court is on 21.08.2018 and a fresh Charge Memo was issued on the same day.

10. At this juncture, it is also relevant to refer the procedures/guidelines to be followed for promotion of IPS Officers and the same is extracted hereunder:

11. PROCEDURE TO BE FOLLOWED IN RESPECT OF OFFICERS UNDER CLOUD

11.1. At the time of consideration of the cases of officers for promotion, details of such officers for in the zone of consideration falling under the following categories should be specifically brought to the notice of the concerned Screening Committee:-

- (a) Officers under suspension ;
- (b) Officers in respect of whom a charge-sheet has been issued and disciplinary proceedings are pending ;
- (c) Officers in respect of whom prosecution for criminal charge is pending.

11.2. The Screening Committee shall assess the suitability of the officers coming within the purview of the circumstances mentioned above, along with other eligible candidates, without taking into consideration the disciplinary case / criminal prosecution which is pending. The assessment



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of the Committee including "unfit for Promotion" and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed "FINDINGS REGARDING THE SUITABILITY FOR PROMOTION TO THE SCALE OF IN RESPECT OF SHRI..... NOT TO BE OPENED TILL THE TERMINATION OF THE DISCIPLINARY CASE / CRIMINAL PROSECUTION AGAINST SHRI....." The proceedings of the Committee need only contain the note "THE FINDINGS ARE CONTAINED IN THE ATTACHED SEALED COVER". The same procedure will be adopted by the subsequent Screening Committees till the disciplinary case / criminal prosecution against the officer concerned is concluded."

18. SEALED COVER CASES ACTION AFTER COMPLETION OF DISCIPLINARY / CRIMINAL PROSECUTION.

If the proceedings of the Committee for promotion contain findings in a sealed cover, on conclusion of the disciplinary case / criminal prosecution, the sealed cover or covers shall be opened. In case the officer is completely exonerated, the due date of his promotion will be determined with reference to the findings of the Screening Committee kept in sealed cover / covers and with reference to the date of promotion of his next junior on the basis of such findings, the officer may be promoted, if necessary, be reverting the junior most officiating person. Such promotion would be with reference to the date of promotion of his junior and in these cases, the officer will be paid arrears of salary and allowances.

19. SEALED COVER PROCEDURE APPLICABLE TO OFFICERS COMING UNDER CLOUD AFTER PROMOTION

In the case of an officer recommended for promotion by the Screening Committee where any of the circumstances mentioned in Para 11 above arise before actual promotion,



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sealed cover procedure would have to be followed. The subsequent committee shall assess the suitability of such officers along with other eligible candidates and place their assessment in sealed cover. The sealed cover / covers will be opened on conclusion of the disciplinary case / criminal prosecution. In case the officer is completely exonerated, he would be promoted as per the procedure outlined in para 18 above, and the question of grant of arrears would also be decided accordingly. If any penalty is imposed upon him as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover shall not be acted upon, as outlined in para 18.2. above.

11. This Court has also perused the original records pertaining to the adoption of sealed cover procedure in respect of officers who are eligible for promotion from Inspector General of Police to Additional Director of Police for the years 2017 to 2022 and in respect of officers who are eligible for promotion from Additional Director of Police to the Director General of Police for the years 2020 to 2022. On perusal of the original records, it is seen that the petitioner's case for promotion was not considered on account of pendency of criminal / departmental proceedings and therefore, the Screening Committee has adopted Sealed Cover Procedure in the the case of the petitioner's promotion for the years 2017 to 2022.



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12. According to the petitioner, there is no legal impediment for effecting regular promotion to the petitioner as ADGP from 09.08.2016 till 10.11.2021 and the sealed cover procedure envisaged under DOPT memorandum dated 14.09.1992 is not attracted for the above period. In the case on hand, admittedly the petitioner sent a representation dated 19.01.2022 to the first respondent seeking consideration for promotion to the rank of ADGP and DGP. Since his request was not considered, he filed O.A.No.131 of 2022 before the Tribunal seeking action of the respondent in not granting adhoc promotion. The Central Administrative Tribunal, Chennai vide order dated 27.04.2023 has dismissed the original application, against which the present writ petition has been filed.

13. Before advertng to the merits of the claim of the petitioner for promotion, it is imperative for this Court to deal with the following aspects.

14. As per Section 21 of the Tamil Nadu Administrative Tribunals



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Act, 1985, a Tribunal shall not entertain the application if it is not made within a period of six months from the date of the representation or within one year from the date of passing of the final order. In the case on hand, though the charge memo was quashed by the High Court on 12.01.2017 and confirmed by the Hon'ble Apex Court vide dated 21.08.2018, granting liberty to the disciplinary authority to issue a fresh charge memo after taking approval from the disciplinary authority, the charge memo was came to be rescinded by the department only on 10.11.2021 and a fresh charge memo was issued on the same day, whereas the petitioner has filed the representation seeking adhoc promotion to the rank of ADGP and DGP to the department only on 19.01.2022 and he has approached the Tribunal only on April 2022. Once the ealier quashing of charge memo had attained finality by the order of the Hon'ble Apex Court on 21.08.2018, the petitioner should have immediately approached the authorities by way of representation for consideration of his case for promotion by opening the sealed cover procedure or by challenging the promotion panel drawn for the year 2019 in the year 2020, but he had neither submitted any representation nor



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challenged the promotion panel drawn for the year 2019. From 21.08.2018 till 2022, the petitioner has kept quiet as he has not filed any representations to the department during such period or challenged the panels drawn for the years 2019 to 2022. No material has been placed by the petitioner before this Court that he has approached the department seeking promotions during that period. He has not challenged the promotion panels drawn for the years 2019 to 2022.

15. We have also perused the limitation clause in the affidavit filed along with the original application filed before the Tribunal. Considering the fact that the main prayer is only for promotion and there is no satisfactory reason or explanation in the aforesaid clause for condoning the delay in challenging the promotion panel for the respective years, the claim of the petitioner is liable to be rejected on the ground of limitation. The petitioner having kept quiet till the passing of the orders passed by this Court on 02.11.2021 in W.P.Nos.21801 of 2012 and Crl.O.P.Nos.5356 & 2691 of 2011, which was filed challenging the transfer of investigation to CBI and he has filed the representation only



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on 19.01.2022, much after the limitation period to approach the Tribunal and therefore, the claim of the petitioner in approaching the Tribunal is hit by limitation under Section 21 of the Tamil Nadu Administrative Tribunals Act, 1985.

16. The petitioner has also not chosen to challenge the belated passing of the order rescinding the earlier charge memo dated 10.11.2021 and so also issuing the fresh charge memo and there is a considerable delay in approaching the Tribunal and therefore, without challenging the aforesaid proceedings, seeking a prayer for consideration of promotion on par with his juniors / batchmates, cannot be acceded to and therefore, seeking such a prayer is liable to be rejected.

17. It is to be noted that when the matter was heard at length by the Hon'ble Supreme Court since 2017 and the Apex Court, while upholding the quashing of the charge memo by the High Court on the ground of not getting approval from the competent authority, has observed that the allegations levelled against the petitioner is serious in nature and granted



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liberty to the respondents to post the petitioner in a non-sensitive post. If at all the petitioner is entitled for any promotion, whether it is regular or adhoc, the petitioner had an opportunity to place the said fact before the Hon'ble Supreme Court at that point of time pointing out the very fact that his suspension was revoked on 09.08.2016 by the Tribunal and the charge memo was quashed by this Court on 12.01.2017. Though both the orders have been upheld by the Hon'ble Supreme Court, considering the serious allegations levelled against the petitioner, the Apex Court opined that the petitioner's suspension to be revoked and reinstate the petitioner by giving a posting in a non-sensitive post and therefore, the claim of the petitioner that he is entitled to be considered for promotion on the ground that the Hon'ble Supreme Court has confirmed the quashing of the charge memo is liable to be rejected. The Tribunal has also considered the above facts in proper perspective in its order.

18. On perusal of the prayer sought in the original application, it is seen that the petitioner has prayed only for a mere mandamus directing the respondents to open the sealed cover of the petitioner in the DPCs



19. The Hon'ble Supreme Court in the decision in **02.09.2011 in**



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C.A.No.7630 of 2011 [High Court of Judicature at Patna v. Madan

Mohan Prasad and Others] observed as follows:

“ There is no manner of doubt that claim of promotion made in C.W.J.C. No. 6538 of 1990 was stale one and could not have been entertained by the High Court. Further juniors to the respondent No.1 who were given benefits of promotion in the years 1971, 1974 and 1978 were not impleaded as respondents in the petition. In their absence, claim advanced by the respondent No.1 could not have been examined by the High Court. Thus, the impugned judgment is liable to be set aside on the ground that stale claim of promotions to different cadres was advanced by the respondent No.1 after great delay and that too without impleading his juniors.

13. In *P.S. Sadasivaswamy Vs. State of Tamil Nadu (1975) 1 SCC 152*, this court has laid down a *firm proposition of law that a person aggrieved by an order promoting a junior over his head should approach the Court at least within 6 months or at the most a year of such promotion and the High Court can refuse to exercise its extraordinary powers under Article 226 in case the person aggrieved does not approach the Court expeditiously for appropriate relief and puts forward stale claim and tries to unsettle settled matters*. Therefore, C.W.J.C. No. 6538 of 1990 in which stale claim of promotion was made by the respondent No.1 was liable to be dismissed.” (emphasis supplied)

The aforesaid decision of the Hon'ble Supreme Court squarely applies to



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the case on hand. In the case on hand the petitioner has not challenged the promotion of his juniors as ADGP right from the year 2016 and he has not challenged their promotion of their juniors within one year and he has also not impleaded his juniors /batchmates as parties in any of the proceedings. Therefore, on the said ground, the claim of the petitioner is untenable and liable to be rejected.

20. Though the learned Senior Counsel for the petitioner placed heavy reliance upon the decision of the Hon'ble Supreme Court in *Union of India vs. K.V.Janakiraman and Others [(1991) 4 SCC 109]*, which stipulates that 'Sealed Cover Procedure' can be applied only when a charge memo / charge sheet in a departmental / criminal proceedings are issued to the charged officer, in the light of the discussions above with regard to the aspect of limitation and non-joinder of necessary parties, this Court need not go into the said submission made by the learned Senior Counsel for the petitioner.

21. The petitioner also raised a contention that one Mr.Jaffer Sait,



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IPS, who stands on similar footing as that of the petitioner, was granted promotion as DGP on 19.01.2019 during the pendency of C.C.No.25/2019 on the file of the Special Court under the Prevention of Corruption Act, Chennai. Since this Court has not gone into merits of the contentions of the petitioner and on considering the other grounds like limitation and misjoinder of necessary parties, the said contention of the petitioner is also liable to be rejected.

22. The Tribunal has considered all these aspects in proper perspective and rightly rejected the case of the petitioner and hence we are not inclined to interfere with the order of the Tribunal and accordingly, the writ petition deserves dismissal.

23. In the light of the aforesaid discussions and the decisions cited supra, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

[D.K.K., J.] [P.D.B., J.]
18.03.2024

Index:yes/no
Internet:yes
Jym



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**D.KRISHNAKUMAR, J.,
&
P.DHANABAL, J.**

Jvm

To

1.The Additional Chief Secretary,
State of Tamil Nadu,
Home (SC) Department, Fort St.George,
Secretariat, Chennai-600 009.

2.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai-600 104.

**Order in
W.P.No.16060 of 2023**

18.03.2024