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W.P.No.33540 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2024

PRONOUNCED ON : 13.12.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.33540 of 2022

T.K.Krishnakumar

... Petitioner

Vs.

1.Union of India,
Represented by
The Secretary to Government,
Ministry of Shipping, Transport Bhavan,
Government of India,
1, Sansad Marg, New Delhi – 110 001.

2.The Director General of Shipping (Ministry of Shipping),
9th Floor, Beta Building,
i-Think Techno Campus,
Kanjurmarg (East),
Mumbai – 400 042.

3.Mukul Dutta,
Deputy Director/Deputy Shipping Master,
Government Shipping Office,
10, Nau Bhavan, R.K.Marg.,
Ballard Estate,
Mumbai – 400 001.

... Respondents



W.P.No.33540 of 2022

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records and to quash the order dated 02.06.2022 in O.A/310/0537/2017 of the Central Administrative Tribunal and to allow the Original Application as prayed for.

For Petitioner : Mr.P.V.S.Giridhar, Senior Counsel
for M/s.Giridhar and Sai

For Respondents : Mr.V.Chandrasekaran
Central Government Senior Panel
Counsel (for R1&2)

ORDER

S.M.SUBRAMANIAM, J.

The Writ on hand has been instituted challenging the order dated 02.06.2022 passed by the Central Administrative Tribunal, Chennai Bench in O.A.No.537 of 2017.

2. The unsuccessful applicant before the Tribunal is the Writ Petitioner before this Court.

3. The Writ Petitioner and the 3rd respondent were appointed to the post of Assistant Shipping Master/Assistant Director (ASM/AD), through Union Public Service Commission during the year 1999. The petitioner was



W.P.No.33540 of 2022

promoted to the post of Deputy Shipping Master/Deputy Director (DSM/DD) on ad hoc basis, which was extended from time to time. However, the 3rd respondent declined to accept ad hoc promotion, due to personal reasons. Thus, he was debarred from promotion for two years.

4. The Departmental Promotion Committee (DPC) was convened for grant of promotions. Based on the recommendations of Departmental Promotion Committee, the petitioner was promoted to the post of DSM/DD on officiating basis. The 2nd respondent had withdrawn the debarment order passed against the 3rd respondent and accordingly, the 3rd respondent was promoted to the post of DSM/DD on 29.07.2004. The provisional seniority list was published and the name of the Writ Petitioner was placed below the name of the 3rd respondent. The applicant claimed that he was promoted to the post of DSM/DD earlier to the promotion granted to the 3rd respondent and therefore, his name must be placed above the name of the 3rd respondent in the provisional seniority list. The petitioner sent several representations to revise his seniority. In the meantime, by order dated 17.01.2014, the petitioner and the 3rd respondent were promoted to the post of DSM/DD with effect from 30.11.2004. It is contended by the petitioner that the 3rd



W.P.No.33540 of 2022

respondent was not holding the said post as on 30.11.2004. But the claim of the petitioner for revision of seniority was rejected and he was placed below the 3rd respondent in the provisional seniority list. Thus, the petitioner filed Original Application before the Tribunal.

5. The Writ Petitioner has further stated that when there was no clear vacancy in the post of Shipping Master/Director, the 3rd respondent was promoted to the post of Shipping Master/Director vide order dated 16.03.2018.

6. Mr.P.V.S.Giridhar, learned Senior counsel appearing on behalf of the Writ Petitioner would mainly contend that the Writ Petitioner was promoted at the first instance to the post of Deputy Shipping Master/Deputy Director, since the 3rd respondent declined to accept the ad hoc promotion granted by the department. Therefore, the 3rd respondent cannot turn around and claim seniority over and above the Writ Petitioner.

7. Secondly, the promotion already granted in favour of the Writ Petitioner constitute a vested right and such right cannot be taken away at the



W.P.No.33540 of 2022

time of fixation of seniority. When the Writ Petitioner was promoted earlier to the 3rd respondent, his name is to be placed above the name of the 3rd respondent in the provisional seniority list. The 3rd respondent was debarred for a period of 2 years from promotion on 22.12.2003, which expired on 21.12.2005. Therefore, the department has no jurisdiction to condone or withdraw the debarment. Even if the department condone the debarment, it cannot be detriment to the vested interest of the Writ Petitioner in the matter of seniority.

8. Mr.V.Chandrasekaran, learned Central Government Senior Panel counsel appearing on behalf of the 1st and 2nd respondents would oppose by stating that, though the Writ Petitioner was promoted on earlier occasion, the promotion was on ad hoc basis and admittedly, not a regular promotion. ad hoc promotion would not constitute any right. Debarment from ad hoc promotion based on representation of the 3rd respondent, would not take away his right to seek regular promotion, since the debarment order was cancelled at his own request. Cancellation of debarment is the administrative decision taken, which cannot be questioned by the Writ Petitioner, since the 3rd respondent was senior to the Writ Petitioner in the



W.P.No.33540 of 2022

initial cadre, namely Assistant Shipping master/Assistant Director as per the merit list published by the Union Public Service Commission. The 3rd respondent has given a request for withdrawal of debarment, which was considered and accordingly, it was withdrawn. The 3rd respondent was promoted and therefore, while fixing the provisional seniority list, the seniority of the 3rd respondent was followed as per the seniority in the initial cadre.

9. The arguments as advanced between the parties to the lis on hand are considered.

10. The admitted fact is that the Writ Petitioner was promoted on ad hoc basis. Such ad hoc/temporary promotion would not confer any right on the employee to seek regular promotion or seniority over and above the seniors, who have temporarily relinquished their ad hoc promotion by submitting representation. The representations submitted by the 3rd respondent, declining to join in the promoted post on ad hoc basis would not dis-entitle him from claiming regular promotion or seniority. His request was confined to the ad hoc promotion and not to decline the regular promotion,



W.P.No.33540 of 2022

which is to be granted by convening the Department Promotion Committee (DPC).

11. In the present case, the Writ Petitioner joined in the promotional post on ad hoc basis and continued as such. Subsequently, the debarment letter was withdrawn by the department at the request of the 3rd respondent. The Tribunal in its findings has categorically stated that Mr.Mukul Dutta had refused to accept the officiating promotion and he was debarred from being considered for promotion for the period of two years vide order dated 05.01.2004. Mr.Mukul Dutta/3rd respondent vide his letter dated 30.07.2004 requested for withdrawal of the debarment order. Since the officiating promotion that was first offered to Mr.Mukul Dutta/3rd respondent for a temporary period debarring the 3rd respondent for granting promotion for a period of two years have no legal validity, his request was considered and his debarment order was withdrawn by the competent authority. The Rule quoted by the Writ Petitioner/Mr.T.K.Krishnakumar on loss of seniority on refusal of promotion cannot be applied for a temporary officiating promotions. Such debarment orders can be issued only when a regular promotion is being refused.



W.P.No.33540 of 2022

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12. It is amply made clear that the officiating promotion given to the Writ Petitioner was a temporary arrangement to officiate the temporary vacant post occurred due to deputation of one Mr.R.M.Elango, Dredging Corporation of India. Such temporary arrangement or ad hoc promotion or holding officiating post on temporary vacancy post would not confer any right to claim seniority. The Rules relied on by the Writ Petitioner have no application with reference to the temporary officiating promotions. Debarment order can be issued only when the regular promotion is being refused. Therefore, the debarment order passed by the Authority itself became unnecessary and has no relevance with reference to the Rules or relinquishment of promotion by the employee. Subsequently, the 3rd respondent was promoted on regular basis and his seniority was fixed as per the original seniority and admittedly, the Writ Petitioner was junior to the 3rd respondent in the initial cadre of Assistant Shipping Master/Assistant Director, which is the entry cadre.

13. The finding of the Central Administrative Tribunal in the order impugned are in consonance with the Service Rules in force and the findings



W.P.No.33540 of 2022

made are based on established principles in service jurisdictional prudence.

Thus, we do not find any infirmity in respect of the order under challenge and consequently, the impugned order dated 02.06.2022 in O.A/310/0537/201 stands confirmed and the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions, if any, are closed.

(S.M.S.J.,) (M.J.R.J.,)

13.12.2024

Index : Yes

Internet: Yes

Speaking order

Neutral Citation : Yes

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To

1.Union of India,
Represented by
The Secretary to Government,
Ministry of Shipping, Transport Bhavan,
Government of India,
1, Sansad Marg, New Delhi – 110 001.

2.The Director General of Shipping (Ministry of Shipping),
9th Floor, Beta Building,
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Pre-Delivery Order in
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