



WP No.25468 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

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S.Vijayan

... Petitioner

versus

... Respondents

1.Union of India,

Represented by the Assistant Director General (Vig-II),
Government of India,
Ministry of Communications & IT,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi -110 116.

2.The Chief Postmaster General,

Tamil Nadu Circle,
Anna Salai, Chennai-600 002.

3.The Assistant Postmaster General (Staff),

For Chief Postmaster General,
Tamil Nadu Circle, Anna Salai,
Chennai-600 002.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorarified Mandamus to call for the records of the Central Administrative Tribunal, Madras Bench in pursuance of the order made in Original Application in O.A.No.310/01408/2016 dated 28.04.2021 and quash the same as illegal, arbitrary and against the principles of natural justice and consequently direct the respondents to grant petitioner promotion to the JTS Group A Cadre on par with that of petitioner juniors with effect from the date of their promotion on notional basis and subsequently to grant all the monetary benefits inclusive of revision of pension to which the petitioner eligible to and pass orders.

For the Petitioner :Mr.Padmanaban

For the Respondents :Mr.C.Kulanthaivel
Senior Panel Counsel
for respondents 1 to 3

ORDER

(Order of the Court was made by *D.KRISHNAKUMAR, J.*)

This writ petition is filed challenging the order of the Central Administrative Tribunal, Madras Bench in O.A.No.310/01408/2016 dated 28.04.2021 and consequently, direct the respondents to grant promotion to



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the petitioner to the JTS Group A Cadre on par with that of petitioner's juniors with effect from the date of their promotion on notional basis and subsequently to grant all the monetary benefits inclusive of revision of pension to which the petitioner is eligible.

2. Brief facts of the case:

2.1. The petitioner was appointed as Postal Assistant on 12.06.1972 and subsequently, he was promoted as Upper Division Clerk and Inspector of Post Offices on 30.01.1978 and 14.07.1981 respectively. He was further promoted as Assistant Superintendent on 31.01.1989 and again promoted as Postal Superintendent/Senior Postmaster on 09.07.2007.

2.2. While so, a charge memo dated 10.04.2006 was issued against the petitioner for alleged supervisory and administrative lapses on his part. In the meantime, willingness was called for by the Postmaster General, Western Region, Coimbatore for promotion as Junior Time Scale Group A Cadre. The petitioner applied vide representation dated 08.11.2011 for the said cadre. The respondents vide order dated 17.01.2012 had rejected his



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representation on the ground that charge sheet under Rule 14 is pending and the case can be examined only after finalization of Rule 14 proceedings.

Thereafter, his juniors were promoted in JTS Group A cadre vide order dated 19.10.2011. Since the petitioner was found unfit due to pendency of the charge memo, he filed an original application in OA No.939 of 2008 challenging the charge memo dated 10.04.2006 before the Central Administrative Tribunal, Madras Bench. The Tribunal, by order dated 19.03.2010, directed the respondents therein to complete the enquiry within a period of six months. Thereafter, challenging the order of the Tribunal, the petitioner filed writ petition in W.P.No.22589 of 2010. The writ court confirmed the said order of the Tribunal and directed the disciplinary proceedings to be completed within a period of 6 months. The respondent sought for extension of time and the same was rejected.

2.3. In the meantime, the petitioner retired from service as Senior Postmaster on attaining the age of superannuation on 31.07.2012. Thereafter, the petitioner filed another original application in OA No.514 of 2013 before the Central Administrative Tribunal, Madras Bench for



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quashing the charge memo dated 10.04.2006 and the subsequent order of continuance of proceedings after his retirement vide Memo dated 17.07.2012 and prayed for settlement of all terminal benefits. The Tribunal, by order dated 05.10.2015, had allowed the said original application to the extent of quashing the charge memo dated 10.04.2006 and the Memo dated 17.07.2012. Pursuant to the order passed by the Tribunal, the respondents therein had implemented the order of the Tribunal dated 05.10.2015 and passed orders dated 17.03.2016 dropping the disciplinary proceedings initiated against the petitioner vide charge memo dated 10.04.2006 and the subsequent Memo dated 17.07.2012.

2.4. Thereafter, the petitioner has submitted a representation dated 09.05.2016 for consideration of his claim for promotion to the post of Junior Time Scale Group A cadre notionally with effect from the date of promotion given to his juniors. The third respondent, by order dated 04.07.2016, had rejected the claim on the ground that non-functional upgradation of Grade Pay of Rs.5400/- has been awarded to the petitioner and the disciplinary proceedings initiated against the petitioner have been



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dropped pursuant to the order of the Tribunal in OA No.514 of 2013 dated 05.10.2015 and the said order has been complied with. Further, the third respondent has stated that since the petitioner has retired from service on 31.07.2012 itself, his request for promotion to JTS Group A Cadre on notional basis with retrospective effect could not be conceded.

2.5. Aggrieved by the same, the petitioner has filed original application in OA No.310/01408/2016 before the Tribunal. The Tribunal, by order dated 28.04.2021 dismissed the said OA with the following observation:

From the perusal of the above impugned order, it is crystal clear that it is a reasoned and well considered order based on the DOPT OM dated 23.2.1999 and it does not suffer from any illegality. This OA is based on no valid or legal grounds and accordingly OA is dismissed.

2.6. Challenging the order dated 28.04.2021, the petitioner has filed the present writ petition.



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3. A counter affidavit has been filed by the respondents, wherein it is stated that the petitioner was imposed with three penalties under Rule 16 of CCS (CCA) Rules 1965 on various occasions vide memos dated 20.05.2003, 01.05.2004 and 1.10.2004 for dereliction of duties. Subsequently, the petitioner got PSS Group B promotion vide Memo dated 12.05.2004. Since punishment awarded in a disciplinary case was current and disciplinary action was contemplated against the petitioner, promotional order was not issued to the petitioner immediately. While so, even after the imposition of three penalties, there was no improvement in the performance of the petitioner, hence he was placed under suspension w.e.f. 05.11.2004 vide Memo dated 04.11.2004 by the Senior Superintendent for failure to maintain devotion to duty. Thereafter, a charge sheet was issued against the petitioner by the Director of Postal Services, vide memo dated 10.04.2006. The charge memo was served to the petitioner on 17.04.2006. An inquiry officer was appointed on 30.05.2006 to inquire into the charges framed against the petitioner.



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4. In the counter affidavit, it is further stated that the petitioner filed OA No.774 of 2005 before the Tribunal to set aside the aforesaid suspension and to promote him as per Memo dated 12.05.2004. The Tribunal, by order dated 05.06.2006, allowed the said Original Application and directed the respondents to reinstate the petitioner in service forthwith and promote him as per Memo dated 12.05.2004. Challenging the same, the Department filed a writ petition in W.P.No.41819 of 2006. The writ court, by order dated 09.11.2006, dismissed the said writ petition. Aggrieved the same, the Department filed SLP No.15419 of 2007 before the Hon'ble Supreme Court and the same was also dismissed. Hence, the suspension of the petitioner was revoked and he was promoted to PSS Group B with effect from 09.07.2007 vide Memo dated 19.06.2007.

5. In the counter affidavit, it is further stated that at this stage, the petitioner filed OA No.939 of 2008 before the Tribunal, challenging the charge memo dated 10.04.2006. By order dated 19.03.2010, the Tribunal



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directed the respondents to complete the enquiry within a period of six months. Against the said order of the Tribunal, the petitioner filed W.P.No.22589 of 2010. This Court confirmed the order of the Tribunal. In the meantime, the petitioner attained the age of superannuation on 31.07.2012. Again the petitioner filed OA No.514 of 2013 before the Tribunal and the Tribunal, by order dated 05.10.2015 quashed the charge memo dated 10.04.2006, pursuant to which, the disciplinary proceedings were dropped on 17.03.2016, initiated against the petitioner vide Memo dated 10.04.2006 and the consequent memo dated 17.07.2012.

6. In the counter, it is further submitted that the request of the petitioner for adhoc promotion for JTS Group A cadre on notional basis with retrospective effect could not be granted for the reason that as charge sheet was pending against the petitioner at the time of considering the petitioner for the aforesaid promotion and further the petitioner had already retired from service on 31.07.2012.

7. Learned counsel for the petitioner submits that petitioner was



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considered in the meeting of the DPC held on 17.05.2012 for promotion to Junior Time Scale of IpoS Group 'A' convened for the vacancy year 2010-2011 and the petitioner was fit for the said promotion. However, the petitioner has not been promoted. The DPC kept the assessment of the petitioner in a sealed cover and the same was not opened. In the meantime, he has attained the age of superannuation on 31.07.2012. Thereafter, the petitioner filed OA No.514 of 2013 before the Tribunal, challenging the Memo dated 10.04.2006 and the Memo dated 17.07.2012 and for a direction to the authority concerned to settled the terminal benefits. The Tribunal, by order dated 05.10.2015 quashed the Memos dated 10.04.2006 and 17.07.2012 and the said order has become final. Pursuant to the order passed in the said OA, the disciplinary proceedings were dropped on 17.03.2016, initiated against the petitioner vide Memo dated 10.04.2006 and the consequent memo dated 17.07.2012. In such circumstances, he is entitled for the notional promotion to the category of JTS Group A cadre with retrospective effect with monetary benefits, on par with his juniors who have been promoted to the said post, which resulted in the filing of the instant original application in OA No.1408 of 2016. The Tribunal has not

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considered the case of the petitioner in a proper perspective and the same was also dismissed by the Tribunal by order dated 28.04.2021 and hence seeks for setting the order of the Tribunal and allow the writ petition.

8. Learned Senior Panel Counsel appearing for the respondents 1 to 3 submitted that the order of the Tribunal is well founded and at the time considering the petitioner for promotion, disciplinary proceedings were pending against the petitioner. Further, the aforesaid charge memos came to be quashed by the Tribunal, and consequently, charges were dropped by the Department only after he retired from service on attaining the age of superannuation. Therefore, his name has not been considered for promotion to the post of JTS Group A Cadre. The Department has also paid higher pay scale under the Scheme to the petitioner. Hence, nothing warrants to interfere with the order of the Tribunal and seeks to dismiss the writ petition.

9. Heard the parties and perused the materials available on record.



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10. The short point involved in the present writ petition is whether the petitioner is entitled for notional promotion to the category of JTS Group A cadre with retrospective effect with monetary benefits, on par with his juniors who have been promoted to the said post.

11. According to the petitioner, charge memos have been issued against the petitioner and subsequently by proceedings in OA No.514 of 2013 dated 05.10.2015, the Tribunal has quashed the aforesaid charge memos and therefore, there is no legal impediment to consider the case of the petitioner for notional promotion on par with his juniors.

12. It is seen that the aforesaid submission of the petitioner has not been discussed by the Tribunal in proper perspective in the instant proceedings. According to the respondents, the notional promotion of the petitioner with retrospective effect on par with his juniors was not considered for the reason that the disciplinary proceedings were pending against the petitioner at the relevant point of time and disciplinary proceedings were dropped only after the petitioner retired from service on

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attaining the age of superannuation. On the aforesaid grounds the petitioner cannot be denied his right for notional promotion as prayed for.

When the Charge Memos were quashed by the Tribunal, pursuant to which the disciplinary proceedings were also dropped by the authorities, and therefore, the petitioner becomes entitled for notional promotion with retrospective effect. The Hon'ble Supreme Court in the case of ***C.O.Arumugam and Others v. State of Tamil Nadu and Ors.*** reported in ***1991 Supp 2 SCC 199***, held as under:

“5. As to the merits of the matter, it is necessary to that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Article 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principle. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they



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are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.”

15.2. In Jayaprakash v. The Government of Tamil Nadu and another [W.P.No.28335 of 2013 dated 18.07.2017 – Madras High Court], it was held as under:

“7. Once the punishments are set aside by the appellate authority itself, the claim of the petitioner ought to be considered as if there was no punishment and as such, the right to promotion of the petitioner during the relevant time as Sub Registrar Grade I and District Registrar cannot be negated in view of the subsequent development as narrated above.”

13. Further, the petitioner cannot be denied the statutory right of promotion as it would infringe the right granted under Articles 14 and 16 of the Constitution of India.

14. In such circumstances, we are of the view that the order of the Tribunal warrants interference and the petitioner is entitled for the relief as



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prayed for and consequently, we are inclined to pass order as follows:

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i) The order of the Tribunal dated 28.04.2021 in O.A.No.310/01408/2016 is set aside.

ii) The respondents are directed to open the sealed cover, in which the DPC has kept the assessment of the petitioner for promotion for the year 2010-2011. If the petitioner has reached the zone of consideration for promotion on par with his juniors, he shall be granted the notional promotion, as prayed for, with monetary benefits from the date of the promotion order passed on par with his juniors.

iv) The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

15. With the above directions, the Writ Petition stands allowed. There shall be no order as to costs.

[D.K.K., J.] [K.B., J.]
12.07.2024

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To

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Government of India,
Ministry of Communications & IT,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi -110 116.
2. The Chief Postmaster General,
Tamil Nadu Circle,
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D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

(mrn)

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