



WP(MD) No.5327 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.03.2024

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THE HON'BLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P(MD)No.5327 of 2021
and W.M.P.(MD)Nos.4267 & 11482 of 2021

Mandeep Singh

... Petitioner

Vs.

- 1.The Director General,
Central Industrial Security Force Head Quarters,
Lodhi Road, CGO Complex, New Delhi.
- 2.The Inspector General,
Central Industrial Security Force,
APS-II Head Quarters, Bangalore.
- 3.The Deputy Inspector General,
Central Industrial Security Force,
APSZ Head Quarters, Chennai.
- 4.The Commandant,
Central Industrial Security Force Unit,
Trivandrum Airport, Trivandrum, Kerala State.
- 5.The Deputy Commandant,
Central Industrial Security Force Unit,
Madurai Airport, Madurai.

... Respondents



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PRAYER: 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 impugned order of the 5th Respondent in Patrank. S.E-38011/K Ov/Su Ba/ASG-Madurai/Prasa/Ka.A/2020-1521 dated 30.09.2020 and quash the same as illegal and consequently direct the Respondents to appoint the Petitioner as Assistant Sub Inspector/Exe through LDCE-2016 based upon the Offer of Appointment dated 19.09.2017 with all other consequential benefits in the seniority from the date of order of appointment.

For Petitioner : Mr.M.Kannan

For Respondents : Mr.S.Jeyasingh,
Senior Panel Counsel
Govt. of India for R1 to R5

ORDER

This Writ Petition has been filed questioning the Office Memorandum in Patrank.S:E-38011/K Ov/Su Ba/ASG-Madurai/Prasa/Ka.A/2020-1521 dated 30.09.2020, whereby the petitioner was informed that the petitioner is not promoted to the post of ASI/Executive through LDCE in terms of a condition at para 2 of offer of appointment issued to the petitioner through LDCE-2016 and para 6 of the Notification issued for the post of



ASI/Executive through LDCE-2016 on the ground that he suffered a punishment before acceptance of technical resignation to the post of Constable.

2. The brief facts that are relevant for disposal of this Writ Petition are as under:

The petitioner was appointed as Constable /GD in the Central Industrial Security Force on 13.05.2010 and while he was working as such, a notification dated 18.11.2016, was issued for recruitment of Assistant Sub-Inspector (Executive) through LDCE-2016, calling for applications from the eligible departmental candidates for filling up of 125 vacancies of Assistant Sub Inspector (Executive) in CISF through Limited Departmental Competitive Examination (LDCE) against the recruitment year 2016. In response to the said notification, the petitioner also submitted an application and also appeared for written examination on 19.02.2017 and became successful. Thereafter, physical measurement and medical examination was conducted in the month of August 2017 and a Provisional Offer of Appointment was issued to the petitioner on 19.09.2017, requiring the petitioner to report to the Principal, CISF RTC Barwaha, Dariamahal,



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Khargone District, Madhya Pradesh for joining and undergoing basic training for the post of Assistant Sub Inspector. However, the said training as scheduled, was postponed through proceedings dated 25.09.2017.

3. Thereafter, the petitioner submitted a technical resignation to the post of Constable on 04.10.2017, but the petitioner was not relieved from the post of Constable by the fifth respondent on the ground that the wife of the petitioner viz., Mrs.Sumit Bala made a complaint against the petitioner. Thereafter, a criminal case was registered against the petitioner at the instance of his wife and basing upon a complaint made by the wife of the petitioner, the petitioner was also subjected to disciplinary proceedings by issuance of a charge memo dated 19.05.2018 which ended in imposition of punishment of stoppage of increment for a period of two years without cumulative effect by an order dated 08.11.2018. Thus, the case of the petitioner for appointment to the post of Assistant Sub Inspector/Executive was not considered, though the petitioner was issued with the Provisional Appointment order dated 19.09.2017. When the petitioner made a claim for such appointment as Assistant Sub Inspector/Executive, the impugned order came to be issued by the fifth respondent informing the petitioner that he is



not eligible for such appointment, as he was awarded with the punishment through the proceedings dated 08.11.2018. Aggrieved by the said Office Memorandum dated 30.09.2020, the petitioner approached this Court by filing the present Writ Petition.

4. This Court by an interim order dated 11.03.2021 stayed the operation of the impugned Office Memorandum dated 30.09.2020. Thereafter, the respondents have considered the case of the petitioner for appointment and he was appointed to the post of Assistant Sub Inspector/Executive by giving a conditional order of appointment dated 18.06.2021 subject to out come of this Writ Petition. The body of the said order dated 18.06.2021 reads as under:

“Please refer to the this Directorate ION No. 14020-(E) dated 15.04.2021, Rectt. Branch ION No. E-32014/ASI/Exe(LDCE)-2019/Rectt/2021/1030 dated 12.05.2021 and ASG Madurai message No. V- 14013/CISF/ASG-MDU/101/CC/2021/769 dated 09.04.2021.

02. The interim order dated 11.03.2021 passed in WP No. 5327 of 2021 has been examined. Upon examination it has been administratively decided to issue conditional offer of appointment to the petitioner subject to outcome of present case/WP as per the opinion of Ld. ASGI of Madras High Court. Counter Affidavit may



also be filed as per the advice of the Ld. ASGI.

03. The competent authority has also directed that Rectt. Branch to examine the matter to remove the contradictions noticed for future recruitments.

04. In view of the above, it is requested to take necessary action at the earliest as per the above administrative decision. Issuance of conditional offer of appointment subject to the outcome of the instant case and filing of CA be done immediately as the matter is listed for hearing on 25.06.2021. A compliance report may also be forwarded to this Directorate for perusal of competent authority please.”

5. Thus, Pursuant to the said order dated 18.06.2021, the petitioner has been working as Assistant Sub Inspector/Executive as on date. The only question that arise for consideration in this Writ Petition is whether the action of the respondents is justified in denying the benefit of the provisional selection pursuant to the notification issued by the first respondent to the post of Assistant Sub Inspector/Executive on the ground that his wife made a complaint and a criminal case was registered at the instance of his wife and the disciplinary proceedings were also initiated at the instance of wife of the petitioner, though the petitioner was successful in the process of recruitment.



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6. Respondent No.5 filed a detailed counter affidavit by placing reliance on para 10 (j) of the recruitment notification dated 18.11.2016 and the instructions issued to the relieving Unit in the Provisional offer of appointment order No.7792, dated 19.09.2017. The relevant paragraphs from the recruitment notification of the Provisional Offer of Appointment Order read as under:

"Para-10 (j) of recruitment notification dated 18.11.2016 (Annexures- R/2) provides that :-

In case any candidate who is having clean record of service as on date of submission of application, is awarded any major or minor punishment subsequently in between the date of submission of application and the date of appointment to the post of ASI/Exe (LDCE), his/her candidature will be rejected. It means a candidate should have clean record of service till his/her final selection and appointment to the post of ASI/Exe through LDCE-2016."

Before relieving the candidate it is requested to verify that the candidate has not been awarded any punishment & is free from disciplinary/vigilance angle/sexual harassment case and criminal case etc as on date. In case any candidate has been awarded any punishment or DE/Vigilance is pending, he/she should not be relieved for joining the post of ASI/Exe (LDCE)."



7. In terms of para 10(j) of the recruitment notification, in case if any major or minor punishment was imposed on any candidate subsequent to submission of application and before the date of appointment to the post of Assistant Sub Inspector, such candidature will be rejected. Thus, the requirement is that the candidate should have a clean record of service till his final selection and appointment to the post of Assistant Sub Inspector/Executive. In the instant case, there is nothing on record to show that there was any criminal case that was registered against the petitioner till the date of final selection and appointment to the post of Assistant Sub Inspector. However, there appears to be a complaint made by the wife of the petitioner, resulting in initiation of disciplinary proceedings and also registration of a criminal case. The registration of a criminal case is concerned, the same stated to have been ended in settlement and the dispute between the petitioner and his wife is stated to have been settled once for all and they have also separated by virtue of a decree of divorce passed by the competent Court.

8. Then, coming to the disciplinary proceedings are concerned, the very charge memo in the disciplinary proceedings came to be issued only on



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19.05.2018 that is almost 8 months after the Provisional offer of Appointment issued in favour of the petitioner and the punishment came to be imposed by an order dated 08.11.2018, ie., almost a year after issuance of a Provisional Offer of Appointment order. Admittedly, the basis for such disciplinary proceedings is also a complaint made by the wife of the petitioner. Thus, there was no complaint or punishment of whatsoever nature that was pending or imposed against the petitioner from the date of submission of his application to the post of Assistant Sub Inspector and the date of his Provisional Appointment order.

9. Coming to the instructions issued in the Provisional Appointment order is concerned, the Provisional Appointment order instructing the Relieving Officer not to relieve or accept the technical resignation for reporting/for training is concerned, there is nothing that is communicated to the petitioner by the respondents as on the date of appointment. No doubt, there appears to be a complaint received from the wife of the petitioner, but that itself will not entitle the respondent to withhold the petitioner from participating in the training to the post of Assistant Sub Inspector/Executive pursuant to the provisional appointment. Even in the instructions issued in



the Provisional Offer of appointment, which is the basis for the respondents to deny the appointment, the requirement is that the relieving officer is required to verify whether the candidate has not been awarded any punishment and is free from disciplinary / vigilance angle / sexual harassment and criminal case etc., as on date of such relieve. In the instant case, there is nothing to show that the petitioner was involved in any of such case as on the date he was supposed to be relieved for reporting/for training with effect from 23.10.2017. Thus, the ground on which the petitioner was denied participating for training and being treated on par with his batch mates is totally unsustainable. Even assuming that there are certain complaints or criminal case is pending as against the petitioner as on the relevant date, the same is only at the instance of the wife of the petitioner, which is a domestic dispute between the petitioner and his wife. The same cannot be put against the petitioner especially in the context of the fact that the disputes between the petitioner and his wife are settled permanently by obtaining the divorce.

10. In the light of the above, this Court does not see any justification on the part of the respondents in denying the petitioner from availing the



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benefits of Provisional Appointment Order dated 19.09.2017. As already noted above, the petitioner was already appointed as Assistant Sub Inspector/Executive through proceedings dated 18.06.2021 and he is functioning as such, it would be appropriate to direct the respondents to continue the petitioner as Assistant Sub Inspector/Executive by extending all the consequential benefits.

11. Accordingly, this Writ Petition is allowed, declaring that the action of the respondents in denying the petitioner of all the benefits that would flow from the Provisional Appointment Order dated 19.09.2017 as illegal and arbitrary and consequently, the respondents are directed to continue the petitioner as Assistant Sub Inspector/Executive pursuant to the Provisional Appointment Order, dated 19.09.2017 and extend all other consequential benefits on par with his batchmates, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.



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NCC : Yes/No
Index : Yes/No
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