



W.P.(MD) No.14334 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.14334 of 2021

Thirumurugan

... Petitioner

Vs.

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

2.The Additional Director General of Police,
Technical Service,
Police Telecommunication Branch,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

3.The Deputy Inspector General of Police,
Technical Services,
Police Telecommunication Branch,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Mandamus directing the respondents to refix the seniority of the petitioner by placing him on par with his batch mates of the recruitment year 2009-2010 by considering his representation dated 09.07.2021 within a period that may be stipulated by this Court.



W.P.(MD) No.14334 of 2021

WEB COPY

For Petitioner : Mr.V.Vishnu

For Respondents : Mr.D.Sasi Kumar
Additional Government Pleader

ORDER

This Writ Petition has been filed for issuance of Writ of Mandamus directing the respondents to re-fix the seniority of the petitioner and place him on par with his batch mates recruited in the year 2009-2010 by considering the petitioner's representation dated 09.07.2021.

2. The petitioner herein participated in the selection process for the post of Sub-Inspector (Technical) conducted by the Tamil Nadu Uniformed Services Recruitment Board (TNUSRB) in the year 2008 and he emerged as successful candidate in the physical and written examinations. The petitioner was sent for medical examination, wherein, he was found 'unfit' on the ground that the petitioner is having a defect in colour vision. On the said ground, the candidature of the petitioner was rejected by the respondents by passing an order in Rc.No.A3/9406/2008 dated 11.11.2009.



W.P.(MD) No.14334 of 2021

3. Aggrieved by the same, the petitioner had made a representation dated 13.11.2009 before the third respondent and requested for second medical examination. The said representation was forwarded to the Director General of Police, Head of Police Force, Tamil Nadu *vide* Rc.No.A3/9406/2008 dated 17.11.2009. Thereafter, the Government constituted a Second Medical Board for re-examination of the petitioner and others. The petitioner appeared before the Second Medical Board and the petitioner was found 'fit' as he is not having any defect in colour vision. In view of the same, the petitioner was appointed to the post of Sub-Inspector (Technical) through Proceedings in Rc.No.A3/9406/2008 dated 30.06.2010. Call letter was sent to the petitioner for training on 07.07.2010 along with II Batch. He has completed training successfully and working as Sub-Inspector (Technical).

4. The grievance of the petitioner is that in the seniority list for the post of Sub-Inspector (Technical) that was prepared on 25.09.2017, the name of the petitioner was not included even in the III Batch of 2010. According to the petitioner, he was supposed to be included in the list for III Batch of 2010, but, his name was not included on the ground that he was sent for training later due to the delay in his appointment as Sub-



W.P.(MD) No.14334 of 2021

Inspector (Technical) because of the first medical report making the petitioner 'unfit' for the said post.

5. It is the contention of the petitioner that he is no way responsible for the first medical report, wherein, he was disqualified. The said medical report was erroneous one and the same was deferred by the Second Medical Board. Thus, for no fault of the petitioner, he missed his seniority along with his batch mates. Therefore, he is entitled to be included in his original batch recruited in the year 2010.

6. The third respondent filed his counter affidavit and there is no dispute on the factual aspects. However, it is contended in the counter affidavit that as per Section 40(6) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the petitioner ought to have raised objections within three years from the date of his appointment to the cadre of Sub-Inspector (Technical). But, the petitioner has raised objection for the first time only in the year 2019 that is beyond the period of 3 years and therefore, he is not entitled to seek redressal of his grievance.



W.P.(MD) No.14334 of 2021

7. This Court has carefully considered the submissions of the learned counsel for the petitioner and the respondents side.

8. As rightly contended by the learned counsel for the petitioner, the seniority list was published only on 25.09.2017 for the post of Sub-Inspector (Technical), wherein, the name of the petitioner was not found. Having noticed the same, the petitioner had made a representation dated 20.11.2017 for including his name in the seniority list. Therefore, the objection on the ground of delay in claiming for seniority in terms of Section 40(6) of the Act does not stand. It is only because of the erroneous Medical Report that was given by the First Medical Board, the petitioner was appointed after re-examination made by the Second Medical Board. Admittedly, the petitioner has successfully completed his training subsequently. Therefore, the petitioner has every right to be treated on par with his batch mates.

9. The issue has also come up before this Court in the case of **P.Govindaraju and another Vs. The Secretary to Government of Tamil Nadud and another in W.P.Nos.19914 & 19915 of 2012**, wherein, the learned Single Judge of this Court has held as under:



WEB COPY



W.P.(MD) No.14334 of 2021

“6. I have considered the rival submissions carefully. The petitioners who were eligible to be selected as Sub-Inspector of Police for the year 1994-1995 were not selected on account of the adverse medical report. Since the medical examination conducted was not proper and a mistake had been committed, a second medical examination was held at the instance of the petitioners herein, wherein they were found fit and consequently appointed in the year 2003. Therefore, it was not mistake of the petitioners for their non selection for the year 1994-1995 and it was the outcome of defective medical examination. Therefore, the seniority of the petitioners should also be refixed along with their batchmates of 1994-1995. As rightly contended by the learned counsel for the petitioners, analogy of the case of R.Mathan vs. Secretary to Government, Home (Police III) Department, Chennai-9, decided in W.P.No.37185 of 2007 on 16.06.2008 should be applied to the case in hand.

7. It is admitted by the learned Additional Government Pleader that the order passed in the case of R.Mathan referred above, was challenged by the Government, by filing a W.A.No.211 of 2009 and the same was dismissed by the Division Bench of this



W.P.(MD) No.14334 of 2021

Court, thereby the order passed by the learned single Judge of this Court was confirmed.”

10. In the light of the above undisputed fact, situation and legal position, this Court is of the considered view that the petitioner is entitled for inclusion of his name in the seniority list along with his batch mates. Accordingly, Writ Petition is allowed directing the third respondent to re-fix the seniority placing the petitioner on par with the persons who were recruited in the year 2009-2010 by duly considering the representations dated 29.10.2020 & 09.07.2021, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this order. The petitioner is at liberty to communicate this order to the third respondent together with a detailed fresh representation.

11. In the result, Writ Petition is allowed. No cost.

06.03.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

JEN



W.P.(MD) No.14334 of 2021

To

WEB COPY

- 1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.
- 2.The Additional Director General of Police,
Technical Service,
Police Telecommunication Branch,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.
- 3.The Deputy Inspector General of Police,
Technical Services,
Police Telecommunication Branch,
Chennai.



WEB COPY



W.P.(MD) No.14334 of 2021

MUMMINENI SUDHEER KUMAR, J.

JEN

W.P.(MD) No.14334 of 2021

06.03.2024