



W.P.(MD).No.15542 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.15542 of 2021

and

W.M.P.(MD)No.12465 of 2021

T.Vednarayanan

... Petitioner

Vs.

1.The Secretary to Government of
India,
Ministry of Ports Shipping and Water
Ways,
New Delhi.

2.The Chairman,
V.O.Chidambaranar Port Trust,
Thoothukudi.

3.The Secretary,
V.O.Chidambaranar Port Trust,
Thoothukudi.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to prepare the Annual Performance Appraisal Report (APAR) of the petitioner for the years 2019-2020 and 2020-2021 forthwith and consider his application for



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the promotion to the post of Deputy Chief Mechanical Engineer in V.O.Chidambaranar Port Trust, Thoothukudi by considering the representation of the petitioner dated 18.08.2021.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.S.Jayasingh
Central Government Standing Counsel

ORDER

This writ petition has been filed seeking direction to the respondents to prepare the Annual Performance Appraisal Report (APAR) of the petitioner for the years 2019-2020 and 2020-2021 forthwith and consider his application for the promotion to the post of Deputy Chief Mechanical Engineer in V.O.Chidambaranar Port Trust, Thoothukudi, by considering the representation of the petitioner dated 18.08.2021.

2. The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

The petitioner joined in the Respondent Port Trust in the year 1987 as Assistant Chargeman (Mechanical). During 1994, he was promoted as Junior



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Engineer (Mechanical), and transferred as Assistant Engineer (Mechanical) in the year 1999. Thereafter, further he was promoted as Assistant Executive Engineer (Mechanical) in the year 2004 and finally he became Executive Engineer (Mechanical) on 12.08.2010. In the seniority of the Executive Engineer (Mechanical), the petitioner was below one Thiru.Senthilkumar who was also promoted as Executive Engineer (Mechanical) on the same day. However, in violation of the promotion norms one R.Baskaran who was junior to the petitioner and one Thiru.Senthilkumar was promoted as Superintending Engineer on 08.02.2016. Such promotion was in violation of rules and on the objection of the petitioner, he was promoted on Adhoc basis and thereafter regularized with effect from 01.05.2019. The Respondent Port Trust by communication dated 24.03.2021 called for applications to the post of Deputy Chief Mechanical Engineer. The petitioner applied for the said vacancy and eight candidates along with the petitioner have applied for the same. In the said notification, it was mentioned that the oral grading of the candidates in the Annual Performance Appraisal Report (APAR) should not be below very good and if the report for a particular year 2010 was not available, the report for the previous year would be considered. However, as far as the Respondent Port is



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concerned, the Annual Confidential Report was prepared only up to the year 2018-2019 and the reports for the following years i.e., 2019-2020 and 2020-2021 were not prepared. In view of the same, the petitioner's Annual Confidential Report from the year 2013-2014 would be taken into consideration and in such case, the petitioner was given only good remarks for the year 2014-2015, 2015-2016. During the petitioner's 35 years of service with Respondent Port Trust, he had not been visited with any disciplinary proceeding and he had a unblemished record of service. Having consistently performed well and that he was rendered only good remarks for the year 2013-2014, 2016-2017 and 2017-2018, only in the year between 2014-2016 exclusively for the purpose of justifying the promotion of his junior over him. Had the Annual Confidential Report been prepared for the years 2019-2020 and 2020-2021, he would have received “very good” remarks. In such a case, the petitioner would have been qualified with “very good” remarks for five consecutive years, for no fault on his part, the same did not happen. Hence, the petitioner made a representation dated 18.08.2021 seeking the respondents to prepare Annual Performance Appraisal Report for the petitioner during the year



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2019-2020 and 2020-2021. Since the same was not considered, the present writ petition came to be filed.

3. Heard the learned counsels on either sides. Carefully perused the materials available on record.

4. It is needless to point out that whenever a representation of this nature is made to a Statutory Authority, there is a duty cast upon the respondent to consider the same on its own merits and pass appropriate orders in one way or other instead of keeping the same pending indefinitely. As such, non-consideration of the representation made by the Statutory Authority would amount to dereliction of duty and hence, this Court will be justified in invoking the extraordinary powers under Article 226 of the Constitution of India.

5. Considering the fact that the petitioner had attained the age of superannuation pending writ petition, without going into the merits of this case, this Court hereby direct the respondents to prepare Annual Performance Appraisal Report of the petitioner for the aforesaid year 2019-2020 and



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2020-2021 forthwith and consider the petitioner's application for notional promotion to the post of Deputy Chief Mechanical Engineer in V.O.Chidambaranar Port Trust, Thoothukudi, by considering the representation of the petitioner dated 18.08.2021 and pass appropriate orders in accordance with law within a period of eight (8) weeks from the date of receipt of a copy of this order.

6. Accordingly, this writ petition stands disposed of. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

19.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

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L.VICTORIA GOWRI, J.

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