



WEB COPY

W.P.No.28744 of 2015



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.28744 of 2015
and M.P.Nos.1 & 2 of 2015

D.Sekaran

...

Petitioner

versus

1.The State of Tamil Nadu

Rep. by its Principal Secretary to Government,
Home (Police 12) Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Director General of Police

Tamil Nadu Police,
Chennai - 600 004.

3.The Additional Director of Police (Operations),

No.17, Boat Club Road,
Marutham Complex,
Raja Annamalaipuram,
Chennai - 28.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in G.O.(2D)No.496 Home (Pol.12) Department dated 18.08.2008 and subsequent order passed by the third respondent in proceedings SC.2.No.0905/TNCF-TNCS/2014 dated 09.10.2014 and also order passed by the first respondent in Letter No.75362/Pol.12/2014-3,



dated 19.03.2015 and quash the same and consequently direct the respondents to promote/appoint the petitioner to the post of Inspector of Police retrospectively from date of his initial appointment on 30.04.93 and on par with his juniors.

For Petitioner : Mr.M.Loganathan

For Respondents : Mrs.V.Yamuna Devi
Special Government Pleader

ORDER

This writ petition is filed challenging the order of the first respondent in G.O.(2D)No.496 dated 18.08.2008, order of third respondent dated 09.10.2014 and further order of the first respondent dated 19.03.2015 and for a consequential direction to promote/appoint the petitioner to the post of Inspector of Police from the date of his initial appointment on 30.04.1993.

2. It is the case of the petitioner that he was initially working as Naib Subedar in the Indian Army and was promoted to the post of Subedar on 07.09.1991 and he got retired on 31.03.1992. Pursuant to which, the State Government issued in G.O.(Ms.)No.2038, Home (Police.XII) Department dated 15.12.1992 for appointing ex.service personnel on contract basis. Based on which, the petitioner was selected and appointed as Sub-Inspector of Police in the Tamil Nadu Police Department.



3. According to the petitioner, since he was working as Subedar in the Indian Army, he was entitled to be appointed as Inspector of Police but due to want of vacancy, he was appointed as Sub Inspector of Police.

The petitioner had been making representations to promote him as Inspector immediately when the vacancy arose which was not considered, but however he was permanently absorbed as Sub-Inspector on 20.02.1996.

4. Later, when the applications were called for appointment to the post of Inspector on 07.12.2000, the petitioner appeared in the written test and followed by an interview, he was successfully selected to the post of Inspector by the Special Committee on 10.01.2001. However, even though he was selected as Inspector, his selection was made on a condition that he has to quit his past services in the post of Sub Inspector.

5. As the petitioner stood meritorious in the selection of Inspector, pursuant to his representation, recommendations were made by the respondents 2 and 3 that the petitioner could be appointed as Inspector without giving up his past services, since even at the time of appointment itself he was appointed as Sub Inspector only due to want to vacancy. Even though recommendation was made by the respondents 2 and 3, the



Government by order dated 18.08.2008 in G.O.(Ms.)No.496, rejected the claim of the petitioner on the ground that the petitioner worked only as Naib Subedar and his promotion to the post of Subedar was only honorary as he did not complete 10 months of service in the rank of Subedar.

6. Pursuant to which, the petitioner had obtained clarifications from the Indian Army clarifying that he was given his regular promotion as Subedar and also he had approached the Armed Forces Tribunal, Regional Bench, Chennai and had obtained his pensionary benefits in the rank of Subedar. The petitioner had made further representation by enclosing the same, but however citing the orders of the first respondent, the claim was rejected by the order of the third respondent dated 09.10.2014.

7. By enclosing the copies of the order passed by the Tribunal and the benefits granted to him in the cadre of Subedar and also the recommendations made, the petitioner approached this Court in W.P.No.34724 of 2014 which was disposed of by order dated 09.02.2015 directing the respondents to consider the claim on merits.



8. Subsequently, the issue in respect of working for a period of 10 months in the promoted post for claiming pensionary benefits in that cadre was considered by the Armed Forces Tribunal, Regional Bench, Chennai in O.A.No.62 of 2014 and by order dated 13.02.2015, it was clarified that the earlier guidelines which prescribed the mandatory service of 10 months was relaxed and it was held that even if the incumbent worked for a single day, he is entitled to get pensionary benefits in the promotional cadre.

9. However by impugned order dated 19.03.2015 again the claim of the petitioner was rejected on the same grounds that he had worked in the Indian Army only in the cadre of Naib Subedar and therefore, his inclusion in the post of Sub Inspector in the Police Department was appropriate and further, even though he was given an honorary Subedar post, he has not worked for the minimum period of 10 months. Assailing all the three orders, the petitioner had preferred the above writ petition.

10. Mr.M.Loganathan, learned counsel for the petitioner argued that when the petitioner was given regular promotion as Subedar which had also been clarified by the Indian Army itself, the impugned orders stating that it was only honorary promotion is without any basis and cannot be



sustained. By placing reliance on the appointment order, he submitted that even though the persons who had worked as Subedar were only appointed as Inspector along with the petitioner on 30.04.1993, only due to want of vacancy, the petitioner was appointed as Sub Inspector and as and when the vacancy arose he ought to have been promoted as Inspector.

11. He further contended that de hors this, when the applications were called for appointment to the post of Inspector, the petitioner had appeared in the written examination followed by interview and had been successfully selected by the Selection Committee to the post of Inspector, which was communicated to him on 10.01.2001 however with a rider that he had to give up his past service of 8 years in the cadre of Sub Inspector which was erroneous.

12. Learned counsel further by placing reliance on the recommendations made by the respondents 2 and 3 submitted that, the service of the petitioner was found meritorious and he would have been appointed as Inspector on 30.04.1993 itself but for the want of vacancy and therefore he was recommended to be given promotion as Inspector at least from 10.01.2001 without relinquishment of the past service.



13. It is his further contention that when he earned his regular promotion as Subedar in the Indian Army, the question of working for a period of 10 months in the post of Subedar to get regular promotion and till such time it will only be an honorary promotion does not arise. In fact, the petitioner had been settled with the pensionary benefits in the cadre of Subedar, subsequent to the clarification orders of the Indian Army itself. Further the position has also been clarified by the orders passed by the Tribunal where the minimum service period of 10 months in the promoted post for claiming pensionary benefits has been relaxed and even if the employee had worked for a single day, it was held sufficient for him to claim the pensionary benefits.

14. It is his further contention that when the petitioner had been permanently absorbed as Sub Inspector in the Tamil Nadu Police State and Subordinate Services as early as on 20.02.1996, he was never given promotion till the date of his retirement i.e. on 30.11.2016 and he got superannuated in the cadre of Sub Inspector itself, which the respondents had denied citing the rejection order and the pendency of the writ petition. He contended that only to deny the benefits to the petitioner, the



respondents had rejected the claim by citing frivolous reasons which is unsustainable and sought for indulgence of this Court.

WEB COPY

15. Per contra, Mrs.V.Yamuna Devi, learned Special Government Pleader for the respondents by placing reliance on the counter affidavit submitted that, the petitioner had only worked as Subedar for a period of 6 months and since he has not completed 10 months of service, he cannot be considered as a regular Subedar and any promotion given at the verge of retirement from the Indian Army due to voluntary retirement is only an honorary promotion and not a regular promotion. Only by taking that into consideration, the petitioner was appointed in the post of Sub Inspector.

16. Her further contention is that the contract appointments have been made only pursuant to the policy of the Government to appoint the ex.servicemen in some of the specialised areas and therefore the petitioner cannot have any grievance or claim for being appointed in any higher post. Only pursuant to the absorption, the petitioner was regularly appointed as Sub Inspector on 20.02.1996 under the Tamil Nadu Police State and Subordinate Service Rules. Since he did not reach the seniority for being considered for any subsequent promotion, he was not promoted and he got



superannuated in the cadre of Sub Inspector on 30.11.2016. The claim of the petitioner had been rightly rejected for these reasons, she contended and sought for dismissal of the writ petition.

17. Heard the rival submissions and perused the materials available on record.

18. The petitioner was originally working as Naib Subedar in the Indian Army and by order dated 07.09.1991 he was promoted to the post of Subedar. Pursuant to his promotion, he worked in the promoted post for nearly 6 months and he retired from the Indian Army. Subsequent to his retirement, in the pension payment order alone, the petitioner has been mentioned as Naib Subedar. However in respect of all other records including the service record, his rank has been mentioned as Subedar pursuant to his promotion.

19. The Government issued G.O.(Ms.)No.2038, Home (Police.XII) Department dated 15.12.1992 by which certain special forces were created and serving/ex.service personnel were appointed on contract basis to the post of Inspectors/Sub-Inspectors/Head Constable/Police Constables for the



Bomb Detection, Disposal and Dog Squad. Though the mode of selection, pay, period of contract and the benefits had been mentioned in the Government Order, the corresponding posts of appointment from the Indian Army and in the special squad had not been specifically mentioned.

20. Based on the Government Order, the petitioner had applied and by the orders of the second respondent dated 30.04.1993, the petitioner was appointed in the post of Sub Inspector. The perusal of the order shows that the ex.servicemen who had worked in the cadre of Subedar had been appointed in the post of Inspector and the petitioner had worked as Naib Subedar and had been appointed to the post of Sub Inspector. The petitioner had accepted the appointment and joined duty as Sub Inspector and only on 04.12.1995 he made a representation that though he was an ex.subedar in the Army, he was appointed as Sub Inspector only due to want of vacancy. Since the vacancy in the post of Inspector had arisen, he requested to be appointed as Inspector.

21. Though no further communications are available in this regard, the second respondent issued proceedings dated 07.12.2000 calling for appointment of ex.servicemen for the post of Inspector in the Bomb



Detection, Disposal and Dog Squad of the Tamil Nadu Commando School, for which the petitioner had applied and appeared in the written examination. Pursuant to the interview, the petitioner came out successfully in the open competition and by proceedings of the second respondent dated 10.01.2001, the petitioner was selected for appointment as Inspector. The relevant portion of the order reads thus:-

“

Dated : 10.01.2001

M E M O

Sub : Police – TNCF/TNCS - Estt. - Appointment - of Tr.D.Sekaran, S.I., BDDS., as Inspr. BDDS., in TNCS., on Contract basis.

Tr.D.Sekaran, S.I., BDDS., has been selected by the Special Committee for appointment as Inspector BDDS of TNCS on contract basis. Before taking up the appointment as Inspector BDDS., he has to quit the service of S.I., since the appointment on contract basis is through open competition. As such, he may choose either to continue as S.I., or to take up the appointment as Inspector BDDS., and act accordingly.

2. Necessary appointment orders are being issued separately.

3. He will acknowledge receipt of this Memo.”

22. Though the petitioner was selected for appointment to the post of Inspector, since the selection was made with the rider that he has to quit from the post of Sub-Inspector, thereby giving up his 7 ½ years of earlier service, he had made representation to appoint him as Inspector without forgoing his earlier service. Based on which, the Inspector General of Police, by proceedings dated 24.01.2001 had recommended to the third respondent that the Government may be addressed to issue necessary



appointment orders appointing him as Inspector without affecting his past services.

WEB COPY

23. In the recommendation, the Inspector General of Police, Operations, had inter alia stated that since the petitioner held the rank of Subedar in the Army equivalent to the post of Inspector, he was appointed originally as Sub Inspector only due to want of vacancy and since he has now been selected to the post of Inspector in the open selection process, he may be considered to be promoted as Inspector at least from 17.01.2001.

The relevant portion of the order is extracted hereunder:-

“3. Tr.D.Sekaran who held the rank of Subedar in the Army equivalent to the post of Inspector, was appointed as SI in BDDS (owing to want of vacancy of inspector) on contrast basis on 01.09.1993 and subsequently absorbed permanently in Tamil Nadu Police Subordinate Service, with effect from 20.02.1996 - vide G.O.Ms. No.264 Home (Pol-XII) Dept. dated 20.02.1996. He is the Senior most Sub-Inspector of Police in Bomb detection and Disposal squad and eligible for promotion as Inspector, B.D.D.S., He has earned more than 72 money rewards and attended to 40 important Bomb Detection disposal cases. He had won a Gold medal in the state Police duty meet held in 2000, in the Anti-Sabotage methods and won silver Medal. during the All In police Duty meet held in September 2000. Tr.D.Sekaran also participated in the selection for appointment of Inspector B.D.D.S. conducted in Tamil Nadu Commando school on 27.12.2000 and secured the first place. As it is, he has to relinquish the services as Sub-Inspector of Police, Bomb detection and Disposal Squad on contact basis. Since the appointment is out of open selection to the post of Inspector, Bomb Detection and Disposal Squad it will be fair and just if he is deprived of the present service as Sub-Inspector in BDDS.

4. He has also represented in his petition date 17.01.2001 for appointment as Inspector of police, Bomb Duration of Disposal squad, by promotion only, without affecting his past services. A copy of the same is



WEB COPY



enclosed.

5. In the circumstances, Government may be addressed to issue necessary appointment orders appointing him as Inspector, BDDS without forfeiting his past services, which were already regularized by the Government. Pending approval of the adhoc rules.”

24. The recommendations of the Inspector General of Police, Operations was also forwarded by the second respondent to the Government by proceedings dated 20.01.2004. In the communication of the second respondent, he had also inter alia recommended that the Government may accord necessary approval for appointing the petitioner as Inspector and all his past services will only be considered in the category of Sub Inspector and his promotion to the post of Inspector will be from the date of grant of approval by the Government.

25. The Government after considering the recommendations of the respondents 2 and 3, issued G.O.(2D)No.496 Home (Pol.12) Department dated 18.08.2008, rejecting the claim on the ground that the promotion of the petitioner as Subedar was only honorary promotion and that he had not completed 10 months of service in the post of Subedar. The relevant portion of the above said Government Order reads thus:-

“2. The Director General of Police in his letter second read above has informed that the petitioner applied to the Tamil Nadu Police while he was working as Naib-Subedar in the Army (equivalent to Sub-Inspector of Police). Subsequently, he was promoted as Subedar (Acting) before his



WEB COPY



retirement. But he had not completed 10 months of service in the rank of Subedar; which is mandatory for sanctioning pension, for the post of Subedar. Hence he had been granted with pension in the rank of Naib Subedar even though he was promoted to the rank of Subedar (Acting).

3. The Government have examined the request of Thiru D.Sekaran, Sub- Inspector of Police, Bomb Detection and Disposal Squad and noted that without completion of 10 months of service in the rank of Subedar in the army, an army official cannot be considered as a regular Subedar. The promotion given to an official on the verge of retirement from the army is only an honorary promotion and it is not a regular promotion. The individual had been promoted as a Subedar (Acting) which was an honorary appointment. Appointment in Tamil Nadu Police can be given only to the post equivalent to the regular post held by an individual in the army. As such the individual was rightly appointed as Sub-Inspector of Police in the Tamil Nadu Police. The Government therefore do not find any valid reason to accept the request of the petitioner and have decided to reject his request. Accordingly, the Government direct that the request of Thiru D.Sekaran, Sub-Inspector of Police, Bomb Detection and Disposal Squad for appointing him as Inspector of Police in Tamil Nadu Police w.e.f. 1.9.1993 be rejected.”

26. Subsequently, the Record Officer of the Indian Army Service Unit by proceedings dated 17.10.2008, addressed to the 1st respondent, had clarified that the petitioner was granted regular promotion to the rank of Subedar on 01.10.1991 and he had served as Subedar till his discharge from service on 31.03.1992. It was also further clarified that the rank of Subedar given to the petitioner is not honorary appointment, as referred in the rejection order of 1st respondent dated 18.08.2008. The relevant portion of the clarification is extracted as follows:-

“2. It is clarified that JC-174503 Ex-Sub D Sekaran had served in the Army (Madras Engineer Group) from 15 Dec 1975 to 31 Mar 1992. The Ex-JCO was granted regular promotion to the rank of Subedar on 01 Oct 1991 and he had served in the rank of Subedar till his discharge from service on 31 March 1992, as per the documents available in this



WEB COPY



office. It is further clarified that the rank of Subedar granted to the Ex-JCO is not honorary appointment as stated in Para 3 of your ibid order.”

27. Further the wrong entry made in the pension order referring the rank of the petitioner as Naib Subedar had also been corrected by the proceedings of the service unit of the Indian Army dated 20.09.2013. Pursuant to the said proceedings, the petitioner had approached the Armed Forces Tribunal, Regional Bench, Chennai in O.A.No.6 of 2014, which came to be disposed of by order dated 24.02.2014 by recording the corrigendum pension payment order dated 19.02.2014, settling the pension to the petitioner in the rank of Subedar.

28. In view of these proceedings, the petitioner had made a further representation to the second respondent claiming his appointment in the post of Inspector from 1993. However the third respondent by order dated 09.10.2014, by simply referring to the proceedings of the first respondent dated 18.08.2008, rejected stating that it cannot be considered.

29. Thereafter the petitioner had approached this Court in W.P.No.34724 of 2014, seeking to promote him to the post of Inspector w.e.f. 01.09.1993 and by order dated 09.02.2015, the writ petition came to



be disposed of by directing the respondents to consider his claim. In the meantime, in an application filed by an ex.serviceman before the Armed Forces Tribunal, Regional Bench, Chennai in O.A.No.62 of 2014 in respect of his claim to settle the pensionary benefits in the promoted post, the issue in respect of serving at least for a period of 10 months in the promoted post came up for consideration and the Tribunal by order dated 13.02.2015, by observing that the removal of stipulation of minimum 10 months service for grant of pension in the last rank served has been further clarified and reiterated in the Government of India proceedings dated 09.02.2001, held that in view of those proceedings, it was sufficient for a personnel of Armed Forces to hold the post even for one day at the time of his discharge to earn pension for that rank. The relevant portion of the order of the Armed Forces Tribunal is extracted hereunder:-

“11. We have already observed that the requirement of 10 months service in the last held rank or Group to earn pension of that rank or Group has been removed and it is sufficient for a personnel of Armed Forces to hold the post even for one day at the time of his discharge to earn pension for that rank. Admittedly, the applicant held the rank of JWO for 5 months when he was discharged from service. However, the respondents have calculated the pension at the rank of Sergeant despite the applicant retired from service with effect from 01.05.2005 long after the introduction of the policy of Government through its letters dated 07.06.1999 and 09.02.2001.”

30. However in spite of the same, again the first respondent considered the claim of the petitioner and rejected it *vide* order dated 16/28



19.03.2015, by reiterating the very same reasons stated earlier that since the petitioner did not work for a period of 10 months which is mandatory to be considered as a regular Subedar, he was only Subedar on honorary basis and further since he was in regular service only as Naib Subedar, he is entitled to be appointed only as Sub Inspector of Police. The first respondent had also not dealt with the subsequent selection to the post of Inspector in the year 2001. The relevant portion of the rejection order is as under:-

“2. In this connection, I am to state that your earlier petition was considered and was rejected by the Director General of Police vide his Office memorandum dated 09.10.2014, based on G.O.(2D) No.496, Home (Pol.12) Department, dated 18.08.2008, on the reasons that you had worked as a Honorary Subedar for a period of less than 10 months, which is mandatory for considering you as regular Subedar. Further, you had applied for the Bomb Detection and Disposal Squad appointment in the rank of Naib-Subedar only and drawn the Pension for Military Services in the rank of Naib-Subedar on your retirement. More importantly, you had competed the Bomb, Detection and Disposal Squad recruitment in the year 1992 in the capacity of Naib-Subedar alone. Hence, your name was considered for the post of Sub-Inspector of Police, Bomb Detection and Disposal Squad during the time of your appointment to Bomb Detection and Disposal Squad. Based on the G.O. (Ms) No.496, Home (Pol.12) Department, dt. 18.08.2008, your similar request was again rejected by the Government vide Government letter No.87345/Pol. 12/2008-5, dt. 11.08.2009.”

31. From the above, it is clear that the petitioner who had worked originally as Naib Subedar was given his regular promotion to the post of Subedar and he had worked in the promoted post for a period of nearly 6 months and got discharged from the Indian Army. The said position has been clarified by the Indian Army Service Unit and further the only record



where he was wrongly mentioned as Naib Subedar was also subsequently corrected and the pensionary benefits of the petitioner had been settled in the cadre of Subedar from the Indian Army as confirmed and recorded in the proceedings of the Armed Forces Tribunal.

32. The first respondent had repeatedly rejected the claim only by referring to the petitioner as Naib Subedar and that his promotion to the post of Subedar was only honorary and he is not entitled to have the benefits in the cadre of Subedar since he did not work for a period of 10 months which has also been reiterated in the counter affidavit. But inspite of giving sufficient opportunities, there is no material produced before this Court to substantiate their stand as to on what basis, they term the promotion as honorary and under which regulations, the minimum period of 10 months service is required to treat Subedar post to be a regular promotion. The Spl. Govt. Pleader fairly submitted that even though the claim has been rejected only on these grounds, they are not able to produce any record supporting their stand.

33. In the absence of any document produced in this regard and in view of the above narrations, the stand of the respondents that the petitioner had only worked as Naib Subedar and his promotion was only honorary and



therefore he will not be treated in the cadre of Subedar cannot be sustained and is accordingly rejected.

WEB COPY

34. On perusal of the policy issued by the Government in G.O.(Ms.)No.2038, Home (Police.XII) Department dated 15.12.1992 appointing ex.servicemen to the post of Inspectors/Sub-Inspectors/Head Constables/ Police Constables in the Bomb Detection, Disposal and Dog Squad by creating a special force, the equivalent post in which the applicants will be appointed in the special squad based on the post which they held in the Army is not specified therein. However from the very appointment order issued by the second respondent dated 30.04.1993, it is evident that the persons who had worked as Subedar have been appointed as Inspectors and persons who had worked as Naib Subedar have been appointed as Sub Inspectors of Police. In the order dated 30.04.1993, one D.Gunasekaran, who worked in the Army as Subedar was appointed as Inspector and the petitioner had been referred as Naib Subedar and had been appointed to the post of Sub Inspector of Police.

35. Though the petitioner for the first time had made a representation on 04.12.1995 stating that, only since there was want of vacancy in the post of Inspector, he was appointed as Sub Inspector and



since a vacancy arose in the post of Inspector he ought to be considered for promotion, no further proceedings have been taken in this regard. However, the recommendation of the third respondent dated 24.01.2001 which has been extracted above, makes it evident that the petitioner who held the rank of Subedar in the Army equivalent to the post of Inspector was originally appointed as Sub Inspector on 30.04.1993 only due to want of vacancy of Inspector. In this regard, though the petitioner had been appointed on contract basis, subsequently he was permanently absorbed in the Tamil Nadu Police State and Subordinate Service w.e.f. 20.02.1996 and he is the senior most Sub Inspector of Police in the Bomb Detection, Disposal and Dog Squad eligible for promotion as Inspector.

36. The respondent vehemently contended that it is an appointment on contractual basis and the petitioner cannot claim any equivalent post for being appointed. As indicated above, there was no reference or guidelines in the Government Order originally issued in respect of corresponding equivalent post, but however the proceedings of the respondents 2 and 3 throw light on the corresponding post in which they have appointed.



37. Further in paragraph 4 of the counter affidavit, it is stated that the ex.army personnel need not necessarily be posted in equivalent post while posted and after getting their willingness they could be posted in the next lower level of vacant post, as the posts are created on the basis of actual requirement only and not on the basis of availability of personnel.

The relevant portion of the counter affidavit is extracted hereunder:-

“4. ... The Government further issued guidelines in letter No.11500/Pol.12/2007-28, Home (Police12) Department, dated 07.07.2011 that Ex-Army personnel need not necessarily be posted in equivalent post while posted. After getting their willingness they could be posted in the next lower level of vacant post, as the post are created on the basis of actual requirement only and not on the basis of availability of personnel/ experts in the market and suggested to fill up the vacant posts by way of redeployment of talented personnel from other Wings of Tamil Nadu Police itself, if need be. Based on the guidelines, in the subsequent recruitments, 17 Ex-Subedars have been appointed as Sub-Inspector, BDDS only, the next lower rank instead of Inspector BDDS, as there was no vacancy in the post of Inspectors, BDDS, as per the proceedings issued by the DGP, Tamil Nadu, who is the appointing authority, in Rc.No.100328/NGB.III/3/ 2013, dated 07.09.2014 and Rc.No.91931/NGB.III/3/2015, dated 23.09.2015. They joined duty and continuing as Sub-Inspector, Bomb Detection and Disposal Squad, at various units in Tamil Nadu Police, though they were served in Army as regular Subedars.”

38. From the above averments, it could be seen that at the time when the petitioner was appointed, there was no guidelines to the effect that for want of vacancy, after availing willingness the concerned incumbent could be posted in the next lower level. The guidelines have been framed only in the year 2011 and for all subsequent appointments where the posts



were not available, the willingness has been obtained from the incumbents and they have been appointed in the next lower category. However, when the petitioner was appointed in the year 1993, since he had worked in the rank of Subedar, he was entitled to be appointed in the equivalent post of Inspector but no such willingness was sought for from him to be appointed in the next lower category. It is claimed that due to want of vacancy he was appointed in the post of Sub Inspector only with the understanding that as and when the vacancy arose, the petitioner will be promoted to the post of Inspector. Since it is a contractual appointment which has been accepted and no records in respect of the understanding is available, except only discernible from the recommendation made by the third respondent as extracted above, the claim of the petitioner for being appointed as Inspector from 1993 itself cannot be sustained.

39. The petitioner though appointed through contract employment in 1993, was permanently absorbed in the Tamil Nadu Police State and Subordinate Service w.e.f. 20.02.1996 and had participated in the open selection when the appointment to the post of Inspector was called for in the year 2001. In the selection, the petitioner stood first on merit and pursuant to the interview by the Selection Committee, he was selected to be



appointed to the post of Inspector and the same was communicated by proceedings dated 10.01.2001. But however the petitioner was asked to give up his entire past service in the post of Sub Inspector for 7 ½ years from the year 1993. Only as such, pursuant to his representation, recommendations were made by the second and third respondents to the 1st respondent that the petitioner being meritorious could be appointed as Inspector.

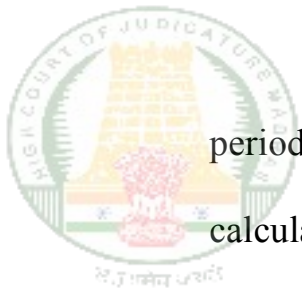
40. In fact, after stating that the petitioner was entitled to be appointed in the post of Inspector in view of the rank held by him in the Indian Army as Subedar and only for want of vacancy he was appointed in the post of Sub Inspector, it was made clear in the recommendation that he could be appointed as Inspector only from the date of his selection in the open competition in the year 2001, without giving up his past service. However in spite of all these proceedings, the first respondent had chosen to reject the claim only on the grounds referred earlier which is not substantiated by any material.

41. It is fortified from the records that the petitioner having been worked as Subedar in the Indian Army, was originally appointed in the post of Sub Inspector in the Police Department in the Special Squad on



30.04.1993 either for want of vacancy or otherwise but still his services have been permanently absorbed in the Police Department under the Tamil Nadu Police State and Subordinate Services Rules from 20.02.1996. When the services of the petitioner had been found meritorious and utilised and when he had participated in the open selection to the post of Inspector and also having been successfully selected by the Committee, the respondents ought to have appointed him in the post of Inspector w.e.f. 10.01.2001, without giving up his earlier service in which he had also been permanently absorbed. The impugned order of the respondents rejecting the claim of the petitioner on the only ground that it was an honorary promotion as Subedar in Army and he did not complete his service for 10 months in the promoted post cannot be sustained in view of the orders passed by the Tribunal and also in the absence of any material produced by the respondents.

42. The petitioner having served in the respondent Department from the year 1993 as Sub Inspector and even though stood first in the open selection and having been selected to be appointed as Inspector on 10.01.2001, still has worked for 23 years in the Bomb detection and disposal squad as Sub Inspector itself without any promotion and got retired from service on 30.11.2016. It is also stated that on superannuation, the



period of service right from 1993 to 2016 has been considered for calculation of terminal and pensionary benefits, which is not disputed by the respondents. Considering the fact that the petitioner had not worked in the cadre of inspector, he could be notionally promoted to the post of Inspector with effect from the date of his selection on 10.01.2001 without any back wages and consequential benefits could be granted. In such circumstances the rejection of the claim of the petitioner at least from 10.01.2001, cannot be sustained and accordingly, the impugned orders are liable to be interfered with.

43. In view of the above deliberations, the impugned orders are quashed and the Writ Petition stands partly ***allowed*** with the following directions:-

- (i) The petitioner shall be notionally promoted (without any back wages) to the post of Inspector w.e.f. 10.01.2001, the date on which he had been selected through open competition.
- (ii) In view of his notional promotion to the post of Inspector w.e.f. 10.01.2001, pensionary benefits shall be worked out accordingly and settled within a period of twelve (12) weeks from the date of receipt of a copy of this order.



44. Consequently, connected Miscellaneous Petitions are closed.

There shall be no order as to costs.

20.01.2025

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri



To

- 1.The Principal Secretary,
Government of Tamil Nadu,
Home (Police 12) Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Director General of Police
Tamil Nadu Police,
Chennai - 600 004.
- 3.The Additional Director of Police (Operations),
No.17, Boat Club Road,
Marutham Complex,
Raja Annamalaipuram,
Chennai - 28.



WEB COPY

W.P.No.28744 of 2015



G.ARUL MURUGAN, J.

sri

W.P.No.28744 of 2015
and M.P.Nos.1 & 2 of 2015

20.01.2025