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W.P.No.15969 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25.06.2025
Pronounced on	22.07.2025

CORAM

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

W.P.No.15969 of 2025

G.Balasubramaniyan

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Environment & Forest Department,
Secretariat, Chennai – 9.

2. The Principal Chief Conservator of Forest,
Head of the Forest Department,
Velachery Rd, Guindy, Chennai,
Tamil Nadu – 600032.

3. The Conservator of Forests,
Vellore Circle, Vellore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing to the respondents to promote the petitioner as Forest Range Officer for the year 2023-2024 based on the selection and inclusion of the petitioner name in the panel of Foresters



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fit for promotion as Ranger for the year 2023-2024 issued by the second respondent vide Proc.No.B2/32526/2023 dated 18.07.2024 without reference to the charge memo No.09.of 2024 dated 29.10.2024 which was issued after the empanelment of the petitioner to the post of Forest Range Officer and promote the petitioner as such with retrospective effect from the date of such promotion of his immediate senior and grant all consequential service and monetary benefits.

For Petitioner : Mr.T.Dharani

For Respondents : Mr.C.Selvaraj,
Additional Government Pleader

ORDER

The instant writ petition has been filed with a prayer for issuing a mandamus to direct the respondents to promote the petitioner as Forest Range Officer for the year 2023-2024 based on the selection and inclusion of the petitioner's name in the panel of Foresters fit for promotion as Ranger for the year 2023-2024, issued by the second respondent vide Proc.No.B2/32526/2023 dated 18.07.2024, without reference to the charge memo No.09 of 2024 dated 29.10.2024, which was issued after the empanelment of the petitioner to the post of Forest Range Officer, and to promote the petitioner as such with retrospective effect from the date of such



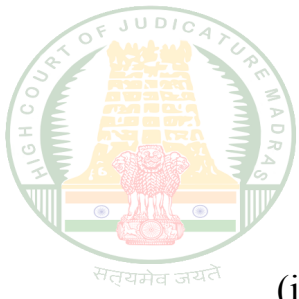
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promotion of his immediate senior, and to grant all consequential service and monetary benefits.

2. The learned counsel for the petitioner would submit that he joined the service as Forest Guard in the Forest Department. Thereafter, by transfer of service, he was promoted as Forester in the Tamil Nadu Forest Subordinate Service on 30.12.2011. He would further submit that the petitioner became fully qualified and eligible to be considered for the promotion post of Forest Ranger as on 15.08.2023. It is the further submission of the learned counsel for the petitioner that his name was included in the panel issued by the second respondent vide panel dated 18.07.2024. However, before the issuance of the posting order, a charge memo dated 29.10.2024 was issued under Section 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules (hereinafter referred to as 'the Rules' for short), and in pursuance of the charge memorandum, though the petitioner was considered for promotion, he was not given a promotional posting order, which is contrary to the settled legal principles of law. Further, the learned counsel for the petitioner relied upon the following judgements:-

(i) ***Union of India Vs. Anil Kumar Sarkar*** reported in (2013) 4 SCC 161.



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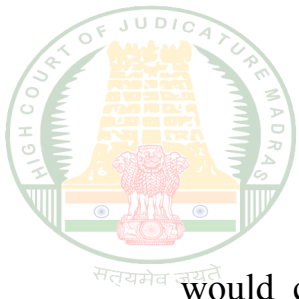
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(ii) ***A.Kalaiselvan Vs. The State of Tamil Nadu and Ors*** reported in ***MANU/TN/1191/2016.***

(iii) ***M.Chandran Vs. The Director of School Education (W.P.(MD) No.19525 of 2018 order dated 15.02.2019)***

(iv) ***A.Jayakumar Vs. The State of Tamil Nadu (W.P.No.7203 of 2020 order dated 18.11.2020)***

3. Per contra, the learned Additional Government Pleader appearing for the respondents would vehemently contend that the promotion is not a fundamental right. However, the employee has a right to be considered for promotion, which was rightly done in this case. It is the submission of the learned Additional Government Pleader that in accordance with the Rule, the petitioner was considered for promotion and order has also been passed provisionally promoted the petitioner as Forest Range Officer vide order dated 20.02.2025. However, his posting order was withheld due to the intervening charge memo dated 29.10.2024. The learned Additional Government Pleader would further contend that even the order dated 20.02.2025 had mentioned that the posting order would be issued after verification of the pendency of the disciplinary proceedings. Therefore, he



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would contend that there is no infirmity in the order of the disciplinary authority.

4. I have given my anxious consideration to the submissions made by either side.

5. The learned counsel for the petitioner, by relying upon the judgement of the Hon'ble Supreme Court of India in *Anil Kumar Sarkar's case* cited supra and other judgments, would contend that the subsequent issuance of the charge memorandum, after the crucial date, has no impact upon his promotion. In all those cases what was dealt is consideration for promotion, and not related to the issuance of a promotional posting order. The judgments relied upon by the petitioner have also dealt with the sealed cover procedure and the effect of second charge memorandum.

6. In order to understand the applicability of the above precedent, this Court deems it appropriate to extract the relevant portion of the judgment of the Hon'ble Supreme Court of India in *Anil Kumar Sarkar's case* cited supra, which reads as follows:-



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“17. Inasmuch as we are concerned about the first question, the dictum laid down by this Court relating to the said issue is as follows: (K.V. Jankiraman case [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322] , SCC p. 118, para 16)

“16. On the first question viz. as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment, etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the



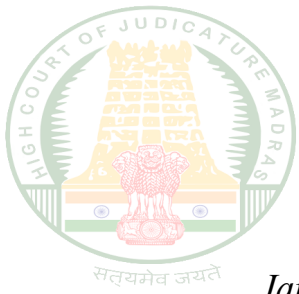
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preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy.”

In para 17, this Court further held: (K.V. Jankiraman case [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322] , SCC p. 119)

“17. ... Conclusion 1 should be read to mean that the promotion, etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge memo/charge-sheet has already been issued to the employee.”

After finding so, in the light of the fact that no charge-sheet was served on the respondent employee when the DPC met to consider his promotion, yet the sealed cover procedure was adopted. In such circumstances, this Court held that: (K.V.



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Jankiraman case [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322] , SCC p. 124, para 32)

“32. ... The Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date his immediate junior Shri M. Raja Rao was promoted pursuant to the order dated 30-4-1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits. ... We see no reason to interfere with this order. The appeal, therefore, stands dismissed.”

7. He further relied upon the judgement of this Court in ***M.Chandran Vs. The Director of School Education (W.P.(MD) No.19525 of 2018 order dated 15.02.2019)***, which reads as follows:-

*“3. The learned Counsel appearing for the petitioner by relying upon the judgment of this Court in the matter of **A.Kalaiselvan v. The State of Tamil Nadu and another**, reported in **2016 Writ L.R. 679** submitted that the issuance of subsequent charges to a Government servant cannot be a bar for inclusion in the promotion panel, which was prepared earlier based on the crucial date. In this regard the learned Counsel for the petitioner relied upon paragraph Nos. 7 and 8 of the said judgment, which read thus:*



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*“7.In **Bank of India and others v. V.Degala Suryanarayan** ((1999) 5 SCC 762), the Hon'ble Apex Court, while dealing with the same issue, held thus:*

*“14.However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc., are kept in a sealed cover to be opened after the proceedings in question are over (see **Union of India etc. etc., v. K.V.Janik,raman etc. etc., AIR (1991) SC 2010, 213.** As on 1.1.1986 the only proceedings pending against the respondent were the criminal proceedings which ended into acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 03.12.1991. In the year 1986-87 when the respondent became due for promotion and when the promotion committee held its proceedings mere were no departmental enquiry proceedings pending against the*



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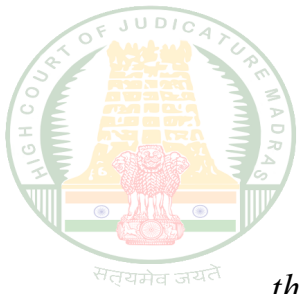


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respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 withheld for the D.E. Proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to which the respondent was found entitled as on 1.1.1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1.1.1986.”

8.A mere reading of the above said judgment clearly depicts that when there is no currency of punishment on the crucial date, the subsequent charge memo cannot be a bar for promotion. Therefore, in the case on had, as stated above, the subsequent charge memo issued against the petitioner after the crucial date cannot stand as a bar for promotion to him. Thus, the impugned proceedings of the respondent in denying to consider his case for promotion citing pendency of a charge memo is unsustainable in law. However, it is also made clear that the petitioner will have to cooperate with the authorities to complete the disciplinary proceedings pending against him in accordance with law.”

4.The learned Counsel for the petitioner further submitted

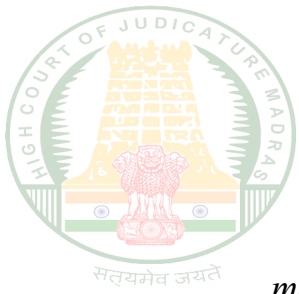


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*that in view of the said judgment of this Court, which was rendered following the judgment of the Hon'ble Apex Court reported in (1999) 5 SCC 762 in the matter of **Bank of India and others v. V.Degala suryanarayana**, there can be no impediment for the respondents to include the name of the petitioner for promotion as per the panel prepared on the basis of the crucial date, namely, 01.01.2018. If at all the petitioner has to face charges framed subsequently after nearly five months, it is open to the petitioner to face the same in the manner known to law and merely on the charges framed after the crucial date, the petitioner's chance of getting included in the panel and further consideration of his candidature for promotion should not be denied. Therefore, the learned Counsel for the petitioner submitted that a direction to that effect may be issued to the respondents to consider his candidature for grant of promotion.*

*8. On reading the said judgment as cited supra, this Court is of the view that as already decided, when there was no currency of punishment on the crucial date, the subsequent charge memo cannot be a bar for promotion. In view of the said legal proposition, as has been propounded by the Hon'ble Apex Court in **Bank of India and A.Kalaiselvan**, cases referred to supra, this Court is of the considered view that in the present case also, the subsequent charge has been framed during the*



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month of May' 2018, whereas the crucial date for the panel for the year 2018 was 01.01.2018 and on that date, if the petitioner was otherwise eligible and qualified, there can be no impediment for considering his name for promotion.”

8. Further, the learned counsel for the petitioner relied upon the judgement of this Court in ***A.Jayakumar Vs. The State of Tamil Nadu*** (W.P.No.7203 of 2020 order dated 18.11.2020), which reads as follows:-

“19. The above principles enunciated by the courts have uniformly held that on the crucial date of consideration of promotion, if an employee/ officer who was not facing any disciplinary action i.e., no charge was pending, no matter whether any subsequent charge memo was issued against him, his name had to be necessarily included. In such view of the matter, this Court has no hesitation in allowing the writ petition. The petitioner, though facing serious charges of demanding illegal gratification, which fact is a cause for concern, yet in view of the clear ratio laid down by the Courts on the subject matter, the settled legal principles need to be applied across the Board, as uniformity in dispensation of justice is one of the hallmarks of the justice delivery system.”

In all the above precedents, it has been consistently held that mere framing of a charge subsequent to the crucial date would not deny a candidate's chance



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of getting included in the panel and further consideration of his candidature for promotion. This position has been infused in Schedule XI (Section 7(1), Part-A, II (1) & (11)) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

9. In the case in hand, the petitioner was considered for promotion and subsequently, he was promoted; in fact, on promotion as a Forest Range Officer, he was ordered to be posted at Chennai Range. Only at that stage, a charge framed subsequent to the crucial date, viz., the charge memo dated 29.10.2024, came to the knowledge of the appointing authorities, and thereby the petitioner's posting order was kept in abeyance. No doubt, the charge memo dated 29.10.2024, though not directly against this petitioner, imputes that he abetted one A.Murthy to get illegal gratification.

10. In the case in hand, though the petitioner was issued with a charge memo dated 29.10.2024, since such charge memo is subsequent to the crucial date qua dated 18.07.2024, after the petitioner was considered for promotion. Therefore, the same itself cannot be a ground to deny the promotion. Though the petitioner faces the charge of abetment to get illegal gratification, a case



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of grave concern, the precedent dealt hereinabove would demonstrate the subsequent charge memorandum, after crucial date cannot put against the employee. This provision is further vindicating under Schedule XI (Section 7(1), Part-A, II (1) & (11)) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. If the second respondent want's to deny the promotion to the petitioner, there are option in the Schedule XI, which course was not opted by the second respondent.

11. At this juncture, though the learned Additional Government Pleader relied upon the clause in the letter dated 20.02.2025, which has the following reference:-

“4. The Officers concerned are requested to issue posting orders to the selected individuals after confirming that there are no charges/punishments pending against them as impediments to their promotion.”

12. This Court is of the view that the above clause can not be an impediment for promotion, since the charge memorandum was issued subsequent to the crucial date. Therefore, this Court is of the view that the above clause will not give any unbridled right to the authority to deny the



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legitimate expectation of the petitioner. Hence, it becomes necessary to direct the second respondent to issue a posting order to the petitioner in the promotional post of Forest Ranger in pursuance of his consideration dated 18.07.2024, with retrospective effect qua with effect from the date of his immediate junior was promoted and grant all consequential service and monetary benefits, within a period of four weeks from the date of receipt of a copy of this order.

13. In the result, this Writ Petition is allowed. No costs.

22.07.2025

kv

Index : Yes/No

Speaking order /Non Speaking Order

Neutral Citation : Yes/No

To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Environment & Forest Department,
Secretariat, Chennai – 9.



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2. The Principal Chief Conservator of Forest,
Head of the Forest Department,
Velachery Rd, Guindy, Chennai,
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