



W.P.No.25673 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-02-2025

CORAM

THE HONOURABLE MRS JUSTICE V.BHAVANI SUBBAROYAN

WP NO. 25673 of 2023

and W.M .P.Nos.25097 and 25100 of 2023

Vidhya Sivasailanathan
Technical Officer 'D' (Health Physics),
Bharathiya Nabhikiya Vidyut Nigam Limited
(BHAVINI), Kalpakkam,
Kancheepuram District.

Petitioner(s)

Vs

1. The Chairman and Managing Director,
Bharathiya Nabhikiya Vidyut Nigam Limited
(BHAVINI), Kalpakkam,
Kancheepuram District.

2. Chairman and The Board Of Directors
(Appellate Authority),

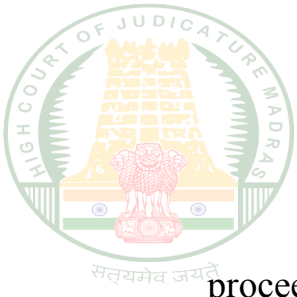
Bharathiya Nabhikiya Vidyut Nigam Limited
(BHAVINI), Kalpakkam,
Kancheepuram District.

3. Head(HR),

Bharathiya Nabhikiya Vidyut Nigam Limited
(BHAVINI), Kalpakkam,
Kancheepuram District.

Respondent(s)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the respondent No.2, in his proceeding No.BHAVINI/HR-Estt./26(113)/2023/02 dated 05.08.2023 passed in the nature of confirming the order dated 17.05.2023 passed by respondent No.1, in the



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proceeding No.BHAVINI/HR-Estt./26(113)/2023/01 and quash the same and consequently grant promotion and all other attendant benefits to the petitioner.

For Petitioner(s):

Mr.S.Ilamvazhudi

For Respondent(s):

Mr. L.P. Shanmugasundaram for R1 To R3
Standing Counsel

ORDER

This petition has been filed to call for the records of the respondent No.2, in his proceeding No.BHAVINI/HR-Estt./26(113)/2023/02 dated 05.08.2023 passed in the nature of confirming the order dated 17.05.2023 passed by respondent No.1, in the proceeding No.BHAVINI/HR-Estt./26(113)/2023/01 and to quash the same and consequently grant promotion with all other attendant benefits to the petitioner.

2. The case of the petitioner is that the petitioner was originally appointed as Stenographer in the respondent organization and upon her qualification and experience, she has opted for the post of Technical Officer/C. Thereafter, she got selected for the said post and the same was objected by the co-employee who filed a criminal complaint against the entire organization. Pursuant thereto, the complaint was referred as a mistake of fact and again protest petition was filed by the defacto



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complainant and the same was also quashed by this Court by an order dated 02.01.2020 in CrI.O.P.No.16452 of 2017. In the meantime, the promotion of the petitioner was represented to the respondent and as per the orders of this Court, the same was considered but subsequent promotions were not granted to the petitioner and kept in the sealed cover. Though the Police Report was closed and promotion was also considered and granted to the petitioner, but on the same set of facts, charge memo was issued and minor punishment was issued in contrary to the service jurisprudence. Hence, the present petition.

3. Learned counsel for the petitioner would submit that subsequent to her appointment as a Health Physicist in BHAVINI Technical Officer/C, she was called for the promotion interview as she was fulfilled with the requirement of 3 consecutive A1 grading (outstanding) in the Annual Performance Assessment Report. The interview was held on 20.06.2016 for promotion to the next higher grade (Technical Officer/D). However, no promotion and consequential benefits were given to the petitioner. Therefore, she filed a writ petition seeking for the relief of grant of promotion for Technical Officer/D on the basis of her representation dated 25.02.2017. The said writ petition in W.P.No.6835 of



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2017 was allowed vide order dated 21.03.2017 and she was given a promotion with effect from 03.07.2015 and since from 01.07.2021, she was eligible for the next promotion of Technical Officer/E, but the same was not granted, though juniors to the petitioner were considered and the results were kept under sealed cover stating that a charge memo had been issued to the petitioner on 05.11.2021. For which, the petitioner has submitted a reply along with necessary enclosures on 16.11.2021, wherein, the date of promotion interview was fixed on 20.04.2022. In fact, on the date of her eligible promotion, i.e., on 01.07.2021, she was not issued with any charge memo and no disciplinary proceedings were pending against her. So in either way, there seems no fault on the petitioner's side and it is from the department side and they made a delay in decision making for nearly five months, and kept the results in sealed cover. Still the petitioner's promotion was kept under sealed cover and she was called for attending the next promotion meeting held on 06.04.2023 along with the next batch who were eligible for promotion with effect from 01.07.2022.

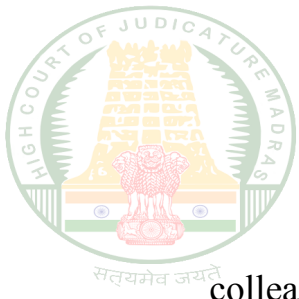
(ii). The petitioner had submitted her grievance to the authorities



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that her results of the previous interview attended by her is lying unaddressed and however, she undertook to attend the interview for the same level for the second time, duly because of the delay in decision making of the authorities concerned. Incidentally, those results were also kept in a sealed cover. In the meantime, a frivolous charge memo dated 08.11.2021 was issued to the petitioner and for which, she has given a reply touching upon the very sustainability of the same and in fact, the same is issued in direct conflict with the orders passed by this Court on more than three occasions. He further submitted that the reasons for holding her promotion was that a false complaint was lodged by one of the unscrupulous employee in the organization, namely Mr. Puwar Dhairyapal Singh, who is working as the Scientific Officer grade D who lodged a police complaint against the respondents and the entire establishment before the jurisdictional Police Station, alleging certain fraudulent acts on the part of the managements on all the possible transaction such as calling for tenders, engaging the contractors, selection of employees and granting promotion etc and he has cited the petitioner's appointment also as irregular. In short, a complete perverted complaint against the management was lodged implicating CMD and other



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colleagues. The said complaint was closed after detailed investigation and examination of several persons in the department.

(iii). Subsequently, the said complainant filed a complaint under Section 156(3) of Cr.P.C and the same was initially allowed directing the Police to register the FIR, however upon filing quash petition in CrI.O.P. No. 22431 of 2016 and ultimately said FIR was also closed as mistake of fact. Thereafter, protest petition was filed by the said employee, which was again challenged in CrI.O.P.No.16452 of 2017 and was quashed by this Court vide order dated 02.01.2020. In spite of traverse of the above length of time and the series of winning legal battle, the first respondent reported that the explanation offered at the petitioner's instance was not satisfactory and therefore imposed minor punishment vide order of the first respondent dated 17.05.2023. The same has been appealed as per the provisions of the BHAVINI (Discipline & Appeal) Rules 2004. The said departmental appeal came to be ended in the nature of confirming the order of the disciplinary authority vide order of the second respondent on 05.08.2023. The very cursory look of the said orders of the respondents amounts to absolutely unjust and improper and the same is well evidenced of non-application of mind and mechanical exercise of



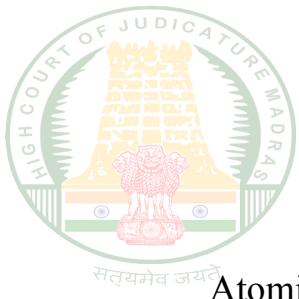
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authority.

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(iv). He further submitted that the respondents No 1 & 2 grossly erred in appreciating the fact that police as well as this Court has applied its mind and passed closure report and quashed the criminal proceedings initiated at the instance of the said ex-employee and as on the crucial date of consideration of promotion to Technical Officer/E, there is absolutely no complaint or representation is pending questioning the grant of promotion to the petitioner, however the same is prolonged for no fault of the petitioner is gross violation of principles of natural justice. Despite selecting the petitioner and holding the issue of promotion order without allowing the petitioner to enjoy the fruits of selection and further promotion scope is gross prejudice and illegal exercise of authority on the part of the respondents and there is absolutely no merit in the order impugned and therefore, the same may be set aside and prays to allow the writ petition.

4. The learned Standing Counsel appearing for the respondents contends that all scientific and technical category of employees of BHAVINI are governed by Merit Promotion Scheme of Department of



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Atomic Energy (DAE) under which the candidate is considered for promotion based on merit, such as performance appraisal grading, length of service etc., It is further contended by the respondent counsel that pending disciplinary case and a memorandum was issued to her, the result of the interview were kept under sealed cover, which was in accordance with the Department of Personnel and Training (DOPT) guidelines dated 14.09.1992 and she cannot be promoted during pendency of disciplinary case. Further, the charge memo was issued to the petitioner was due to the reason that she claimed age relaxation for her recruitment process for the post of Technical officer (TO/C) (Health Physics) without having working experience of the relevant field. And the experience certificates submitted by her were misleading and not relevant to the experience in specific field/work area as required for the advertised post to Technical Officer/C. Therefore, the penalty awarded by the disciplinary authority after following due disciplinary proceedings with the set of Rules and not in violation of principle of natural justice. Hence, this Court may please to dismiss the present writ petition.

5. Heard the rival submissions made on either side and perused the



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materials available on record.

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6. On perusal of records, it is seen that the authorities have not complied with the directions of this Court made in WP.No.6835 of 2017 dated 21.03.2017, pursuant to which, the petitioner was promoted w.e.f. 03.07.2015. The petitioner is eligible for the next promotion of Technical Officer/E, the same was not granted and the juniors were considered and the result of the petitioner was kept in a sealed cover for the reason that charge memo has been issued. It is to be noted that as on 01.07.2021 no charge memo, FIR and disciplinary proceedings were pending. During that relevant point of time, an unscrupulous employee filed a complaint under Section 156(3) and the FIR came to be registered and the same came to be quashed by this Court in Crl.OP.No.22431 of 2016. Challenging the same, a protest petition was filed, the same was also quashed by this Court in Crl.OP.No.16452 of 2017 dated 02.01.2020. This Court finds that the first respondent passed the order dated 17.05.2023 imposing a minor penalty, the same was appealed by the petitioner before the appellate Authority/2nd respondent herein on 30.05.2023 and the second respondent/appellate authority without giving an opportunity of hearing to the petitioner to put forth her claim, passed



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the order impugned dated 05.08.2023 by confirming the order of minor penalty imposed by the first respondent. **Hence, the order passed by the by the first respondent on 17.05.2023 and the subsequent order passed by the second respondent in his proceeding No.BHAVINI/HR-Estt./26(113)/2023/02 dated 05.08.2023 is hereby quashed.**

7. With the above observations, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No

Internet: Yes/No

Speaking order: Non-speaking order

To

1. The Chairman and Managing Director,

10/12

<https://www.mhc.tn.gov.in/judis>



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Bharathiya Nabhikiya Vidyut Nigam Limited
(BHAVINI), Kalpakkam,

Kancheepuram District.

2.Chairman and The Board Of Directors
(Appellate Authority),

Bharathiya Nabhikiya Vidyut Nigam Limited
(BHAVINI), Kalpakkam,
Kancheepuram District.

3.Head(HR),

Bharathiya Nabhikiya Vidyut Nigam Limited
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V.BHAVANI SUBBAROYAN,J.

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