
(2009) 04 MAD CK 0414
In the Madras High Court
Case No : W.A. No. 673 of 2008

Arokiadoss

APPELLANT

Vs

The Commissioner of Police

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Citation : (2009) 04 MAD CK 0414

Hon'ble Judges : P. Jyothimani, J;Aruna Jagadeesan, J

Bench : Division Bench

Advocate : K. Venkataramani for M. Muthappan, for the Appellant; R. Thirugnanam, Spl. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The writ appeal is directed against the order of the learned Single Judge dated 14.2.2006 passed in W.P. No. 32188 of 2005, dismissing the writ petition filed by the appellant herein, which was transferred from the Tamil Nadu Administrative Tribunal.

2. The appellant has approached the Tamil Nadu Administrative Tribunal by filing O.A. No. 1088 of 2001, praying for a direction against the respondent to revise his seniority in the cadre of Grade I Police Constable as well as Head Constable on par with his junior and to grant him all consequential benefits.

3. The appellant was originally appointed as Grade II Police Constable on 1.3.1967. On the basis of some charges levelled against him, the appellant was dismissed from service by an order dated 9.2.1988. Subsequently, the order of dismissal has been modified as that of compulsory retirement, by proceedings of the respondent dated 3.3.1988. On his filing a writ petition in W.P. No. 5268 of 1988, the matter was remanded back to the respondent, being the appellate authority. The respondent, originally, by an order dated 21.2.1989 upheld the order of compulsory retirement dated 3.3.1988. The appeal filed against the said order to the Director General of Police was also dismissed on 25.7.1989.

4. The appellant has filed O.A. No. 1461 of 1989 before the Tamil Nadu Administrative Tribunal against the order of the respondent dated 21.2.1989 and the Tribunal, by order dated 14.9.1993, remanded back the matter to the Commissioner for fresh disposal. However, in the meantime, the appellant was reinstated into service on 25.7.1994, without prejudice to the disposal of the appeal preferred by him. Subsequently, the respondent passed the order dated 27.9.1994, modifying the order of dismissal from service into one of reduction in time scale of pay by two stages for a period of two years with cumulative effect, and based on the modified punishment imposed, the period between 13.8.1987 to 8.2.1988 was ordered to be treated as leave period and the period between 9.2.1988 to 24.7.1994 was settled as eligible leave under F.R.54. It is seen that the appellant was thereafter promoted as Grade I Police Constable with effect from 20.3.1993 and as Head Constable with effect from 21.3.1998.

5. The appellant has given representation on 1.10.1999 requesting the respondent to give promotion to him as Grade I Police Constable with effect from 1989 and as a Head Constable from 1.1.1997. Since the said representation was not considered, he has approached the Tribunal, as stated above, and the matter stood transferred to this Court as writ petition.

6. The learned Single Judge, having found that the appellant was not exonerated of the charges levelled against him, but only a modified punishment of reduction in time scale of pay by two stages for a period of two years with cumulative effect has been imposed, held that the period of suspension cannot be treated as a duty period. In as much as the appellant was not in service during that time, the learned Single Judge held that he cannot claim promotion on par with his batch-mates and that the appellant is not entitled to claim promotion as Grade I Police Constable with effect from the year 1989.

7. Mr. K. Venkataramani, learned Senior Counsel appearing for the appellant, while assailing the judgment of the learned Judge, would submit that when once the punishment has been ultimately modified to that of reduction in time scale of pay by two stages for a period of two years with cumulative effect by an order dated 27.9.1994, it should go back to the original date of dismissal, namely 9.2.1988 and 3.3.1988, by which the punishment of dismissal was modified as compulsory retirement and after two years from the said date, the appellant should have been given promotion.

8. It is the contention of the learned Senior Counsel for the appellant that the claim of the appellant for promotion as Grade I Police Constable has been accepted from 1993 onwards and subsequently, he was made as Head Constable in the year 1999, whereas, by applying the modified punishment, the appellant will be entitled to promotion as Grade I Police Constable from the year 1992 and by applying the notional promotion, he will be entitled to one increment, particularly in the circumstances that the appellant has retired from service on 31.11.2006.

9. On the other hand, it is the contention of the learned Special Government Pleader that the appellant was out of employment from 13.8.1987 to 24.7.1994 and therefore, he cannot be considered for promotion from the year 1993.

10. The learned Special Government Pleader, by placing reliance on the guidelines issued by the Government in respect of preparation of panel for appointment by promotion/recruitment by transfer in letter dated 20.10.1997, especially on the guideline regarding the effect of punishments on inclusion in the panel, which reads as follows:

2) Any punishment, other than "Censure", imposed on an officer within a period of five years prior to the crucial date and a punishment of "Censure" within a period of one year prior to the crucial date should be held against the officer. In such a case the Officer's name should be passed over.

Provided that if the officer was imposed with any of the punishments within the check period as mentioned above for irregularities/delinquencies which occurred five years prior to the date of punishment, such punishment need not be held against him.

Provided that an Officer passed over once, need not be passed over for the second time on account of the same punishment at the time of subsequent consideration for the next panel.

would contend that after the order passed in appeal on 27.9.1994, during the check period, namely five years prior to the date of punishment, the appellant would not be entitled to promotion. In other words, according to him, the order in the appeal, modifying the punishment, being on 27.9.1994, that should be taken as a crucial date and five years prior to the said crucial date there is no need to promote the appellant.

11. If the said argument is accepted, it is true that the appellant would not be entitled to promotion as Grade I Police Constable from the year 1989 till the crucial date, viz., 27.9.1994. But, the fact remains that the appellant has been given promotion as Grade I Police Constable on 20.3.1993. Therefore, it is clear that the said guidelines relating to the check period have no application on the facts and circumstances of the case, as it is understood by the respondent himself. It is seen that the appellant was promoted as Grade I Police Constable with effect from 20.3.1993, by an order dated 25.2.1998. Likewise, he was promoted as Head Constable with effect from 3.9.1999 and he has filed the Original Application before the Tribunal on 5.2.2001.

12. It is also relevant to note that when the final authority, namely the respondent, has passed an order on 27.9.1994, modifying the dismissal order to that of reduction of time scale of pay by two stages for a period of two years with cumulative effect, it certainly goes back to the original date of dismissal, which was on 9.2.1988 or 3.3.1988, by which it was modified as compulsory retirement. From the said original date of punishment, if reduction of time scale

of pay by two stages for two years is taken into consideration, the appellant may not be entitled to be promoted as Grade I Police Constable in the year 1989, but certainly he would be entitled to notional promotion after the lapse of two years from the date of original punishment.

13. In the present case, the claim of the appellant, as submitted by the learned Senior Counsel, is that he should be given promotion notionally as Grade I Police Constable from the year 1992 instead of giving it from the year 1993. This vital aspect, that the modified punishment will be given effect to from the original date of punishment, has not been considered by the learned Single Judge. The learned Single Judge has proceeded on the pretext that from the date of dismissal on 9.2.1988 till the appellant was reinstated 25.7.1994, he was out of employment and therefore, the reduction of time scale of pay by two stages for a period of two years cannot be notionally fixed, which, in our view, is not the correct legal position. The law is well settled that when once in the disciplinary proceedings the ultimate authority passes an order modifying the original punishment, certainly the modified punishment goes back to the original date of punishment.

In that view of the matter, this writ appeal is allowed and the order of the learned Single Judge is set aside with a direction to the respondent to confer the notional promotion to the appellant as Grade I Police Constable from 1992, if he was otherwise not disqualified, and also to confer the consequential promotion of Head Constable accordingly. The respondent shall pass appropriate orders, expeditiously, in any event within eight weeks from the date of receipt of a copy of this order. No costs.