

**(2010) 11 MAD CK 0336**

**In the Madras High Court**

**Case No :** Writ Petition No. 5711 of 2009 and M.P. No's. 1 and 2 of 2009

D. Prabakaran

APPELLANT

Vs

The General Manager Personnel and Administration (R and A)  
Department and The Managing Director, Chennai  
Metropolitan Water Supply and Sewerage Board

RESPONDENT

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**Date of Decision :** 25-11-2010

**Acts Referred:**

**Citation :** (2010) 11 MAD CK 0336

**Hon'ble Judges :** B. Rajendran, J

**Bench :** Single Bench

**Advocate :** S. Ragavan, for the Appellant; B. Shantha Kumar, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

B. Rajendran, J.—By consent of both sides, the writ petition itself is taken up for disposal.

2. The Petitioner was promoted as Accounts Officer in May 2009, after inclusion of his name in the panel for the year 2009-2010. According to the Petitioner, his name ought to have been included in the panel drawn in July 2007 for the year 2007-2008 itself, but his name was not included in the panel for promotion to the post of Accounts Officer in July 2007 as he was undergoing punishment of stoppage of increment for three years without cumulative effect imposed on him by order dated 08.2.2005 and that punishment was in force till July 2008. According to the Petitioner, when the currency of punishment was over, his name ought to have been considered for promotion and that he should not suffer humiliation by way of loss of seniority. The refusal to consider his claim for promotion during the currency of punishment is only a temporary measure and it does not mean loss of seniority. He would contend that during the period of currency of punishment, 25 juniors were promoted to the post of Accounts Officer. Therefore, according to the Petitioner, on a successful completion of currency of punishment, at least for the future promotion, his seniority should be

refixed from 2007 since his junior was already promoted. To that effect, the Petitioner made a representation dated 24.9.2009 and the same has been rejected by the authority concerned by an order dated 03.3.2010. Challenging the same, the Petitioner has come forward with this writ petition.

3. The Respondent has filed a detailed counter contending among other things that the Respondent Board, after following the guidelines issued by the Government, has correctly passed the impugned order. According to the guidelines whenever an officer is undergoing any punishment other than "Censure" on the crucial date, or on the date of consideration, then irrespective of time of occurrence of the irregularity his name should be passed over for that panel. If the currency of punishment continues at the time of subsequent consideration for the next panel, he should still be passed over on the grounds that an officer should not be considered for promotion or promoted during the currency of any punishment. After the completion of his currency, no punishment should be held once again against the official even if it falls within the check period of 5 years of any panel, if it has already been held against the official on any earlier occasion. Accordingly, the Petitioner's punishment has been effected between July 2005 to July 2007. Hence, the Petitioner is eligible for promotion only after 01.7.2008. Therefore, his name was rightly taken up for consideration in the panel for the year 2009-2010, after completion of punishment on 30.6.2008, and rightly promoted during May 2009.

4. It is also pertinent to point out that the Petitioner has already challenged the panel for promotion to the post of Accounts Officer in W.P. No. 25209 of 2007 and the same was also dismissed. Now the Petitioner has made a representation requesting to restore his original seniority and the same was rightly rejected as literally he is seeking for promotion from the earlier date when his juniors were promoted. As per Clause 5 (4) of the Employees Service Regulation 1978, it has been very clear that after the currency of punishment, they may be considered for inclusion in the subsequent panel if they are otherwise qualified but the seniority cannot be restored in the higher post after completion of punishment. In view of the same, the Petitioner cannot seek the seniority from 2007 and also for future benefits.

5. The short point for consideration in this writ petition is as to whether the officer, who suffered a punishment in departmental enquiry, after the currency of the punishment is over, whether can claim seniority insofar as promotion done during the period of currency.

6. In this case, admittedly, the Petitioner was imposed punishment of stoppage of increment for a period of three years with cumulative effect, i.e. from 2005 to 2008 and hence, his name was passed over, when the panel was prepared for promotion in the year 2007. In the meanwhile, all his juniors, who are eligible, were promoted. Now the contention raised by the Petitioner is that since the currency of punishment was over and his name was considered and included in the next panel i.e for the year 2008-2009, his seniority should be fixed at par

with those of his juniors, who have been promoted in May 2007. That means, he is literally asking for a prayer that he should have been promoted in the year 2007 or he should be treated with those persons, who have been promoted in the year 2007, when he was passed over.

7. In this connection, the learned Senior counsel for the Respondent brought to the notice of this Court the decision of the Apex Court reported in Union of India Vs. K.V. Jankiraman, etc. etc., . In that case, the Hon`ble Supreme Court held that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently. There therefore is no discrimination if the Petitioner is treated differently in the matter of promotion. The Hon`ble Supreme Court has also stated that the least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalized in praesenti. When an employee is held guilty and penalized and he need not be promoted at least till the date on which he is penalized and he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. Paragraph 29 of the said judgment reads as follows:

29. According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an

employee with promotion retrospectively from a date when for his conduct before that date he is penalized in praesenti. When an employee is held guilty and penalized and is, therefore, not promoted at least till the date on which he is penalized, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second subparagraph after clause iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal.

The Hon`ble Supreme Court has further held as follows:

The Tribunal has found fault With the authorities on two grounds. The Tribunal has observed that although when the DPC met in June 1988, the employee was already served with a charge sheet on February 22, 1988 and, therefore, the sealed cover procedure could not be faulted, since admittedly his juniors were given promotion with retrospective effect from July 30, 1986, the DPC should not have excluded the Respondent's name from consideration when it met on June 3, 1988. The second fault which the Tribunal has found is that since the penalty of stoppage of increment was imposed at the end of the disciplinary proceedings, it was not open for the authorities to deny the Respondent his promotion to the Selection Grade as that amounted to double penalty. Having taken this view, the Tribunal has directed that a Review DPC should consider the "Respondent"s case for promotion w.e.f. July 1986 when his juniors were given promotion taking into account his performance and confidential records up to 1986. We are afraid the Tribunal has taken an erroneous view of the matter. Admittedly, the DPC met in June 1988 when the employee was already served with the charge-sheet on February 22, 1988. The charge-sheet was for misconduct for the period between 1982 and 1985. Admittedly further, the employee was punished by an order of August 19, 1988 and his one increment was withheld. Although, therefore, the promotions to his juniors were given with retrospective effect from, July 30, 1986, the denial of promotion to the employee was not unjustified. The DPC had for the first time. met on June 3, 1988 for considering promotion to the Selection Grade. It is in this meeting that his juniors were given Selection Grade with retrospective effect from July 30, 1986, and the sealed cover procedure was adopted in his case. If no disciplinary proceedings were pending against him and if he was otherwise selected by the DPC he Would have got the Selection Grade

w.e.f. July 30, 1986, but in that case the disciplinary proceedings against him for his misconduct for the earlier period, viz., between 1982 and 1985 would have been meaningless. If the Tribunal's finding is accepted it would mean that by giving him the Selection Grade w.e.f. July 30, 1986 he would stand rewarded notwithstanding his misconduct for the earlier period for which disciplinary proceedings were pending at the time of the meeting of the DPC and for which again he was visited with a penalty. We, therefore, allow the appeal and set aside, the finding of the Tribunal. There will, however, be no order as to costs.

(Emphasis Added)

8. The above judgment will squarely be applicable to the facts of the present case. Therefore, the argument of the learned Counsel for the Petitioner that since the currency is over, the Petitioner's seniority should have been considered from the original date, when his juniors were promoted, cannot be accepted and it is not permissible under law. I do not find any merits in the writ petition and the same is dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.