

(2005) 04 MAD CK 0089

In the Madras High Court

Case No : Writ Petition No. 2532 of 2001

D. Sreevalsan

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-04-2005

Acts Referred:

Citation : (2005) 04 MAD CK 0089

Hon'ble Judges : S.K. Krishnan, J;P. Sathasivam, J

Bench : Division Bench

Advocate : T. Sugesh, for the Appellant; K. Mohanram, Sr. Central Govt. Standing Counsel for R-1 to R-3, for the Respondent

Judgement

P. Sathasivam, J.—The petitioner herein challenges the order of the second respondent dated 02.11.2000, in and by which, his request for

promotion to the rank of HC (GD) along with his batchmates and for review of seniority of HC (GD) was rejected.

2. Heard learned counsel for petitioner as well as learned Senior Central Government Standing Counsel for respondents-1 to 3.

3. In the light of the order to be passed here-under, we are of the view that it is unnecessary to go into the factual details as referred to in the affidavit as well as in the counter affidavit of Respondents-1 to 3.

4. It is seen from the materials placed that the petitioner herein was appointed as Security Guard in the C.I.S.F (Central Industrial Security Force)

on 15.09.1971. He was promoted on 24.12.1982 as Senior Security Guard, on 23.5.1985 as Head Constable, and on 10.08.1998 as Assistant

Sub-Inspector/Executive. It is also brought to our notice that in 1983, while he was working as Naik in the C.I.S.F Unit, Calcutta Port Trust, he

availed leave on medical grounds. On expiry of the leave period, he applied for extension of leave between 19.08.1983 and 05.01.1984.

However, he was placed under suspension in view of the enquiry into the allegation of overstaying beyond the leave period.

5. It is the grievance of the petitioner that though, based on the materials placed, he was exonerated from the charges framed by final order dated

29.11.1984, his claim for promotion was not considered along with his batchmates in 1984. The said final order, which is available at page No. 1

of the typed-set filed by the petitioner, clearly shows that after a detailed enquiry, the authority concerned, viz., A.B. Vohrah, Commandant, in

Proceedings No. E-25015/84/Ad.II/DP-941 dated 29.11.1984, had passed the following order:-

4. I, therefore, order that No. 7115150 Naik Sreevalsan D is exonerated from the charges framed against him and the case be filed.

5. The period of his suspension from 19.8.83 (AN) to 6.1.84 (AN) will be treated as on duty for all purposes.

6. The said order makes it clear that the petitioner was exonerated from the charge relating to overstaying for a particular period and that even the

period of suspension from 19.8.83 to 6.1.1984 was ordered to be treated as on duty for all purposes. When such is the position, we are of the

view that it is but proper for the authority concerned to consider the case of the petitioner and promote him on par with his batchmates.

7. No doubt, in the counter affidavit, it is stated that at the time when the Promotion Committee met, i.e., on 29.3.1984, the Committee could not

have perused the order referred to above, namely, order dated 29.11.1984 exonerating the petitioner from the charges, as it was passed

subsequently, hence, the Committee had no occasion to consider the same. However, when the petitioner was exonerated from the charges for

which his claim for promotion on par with his batchmates was not considered in 1984, it is but proper for the authorities to consider the same

thereafter.

8. Yet another objection raised by the learned counsel appearing for respondents-1 to 3 is that the petitioner has not made the representation

immediately and on the ground of laches his claim has to be rejected, for which, he relied on the decision of the Apex Court reported in P.S.

Sadasivaswamy Vs. State of Tamil Nadu, . With reference to the said contention, learned counsel appearing for the petitioner has brought to our

notice that during 1985-1989 he was transferred and posted at CISF Unit, Oil India Limited, Duliyaan, Assam; 1989-1993 at CISF Unit, PSLV,

Valiamala, Thiruvananthapuram; 1993-1997 at CISF Unit, Heavy Engineering Corporation, Ranchi, Bihar; 1997-1998 at CISF Unit, Paradip,

Orissa; in 1998 at CISF Unit, Rourkela as ASI/Exe and finally in 2000 at CISF Unit, Chennai Port Trust, hence, according to him, he was not in a

position to either represent then and there or pursue his representation already made.

9. The above mentioned particulars clearly show that from 1985 to 2000, the petitioner was working at various places all over India viz., Assam,

Thiruvananthapuram, Bihar, Orissa, Rourkela and finally at Chennai. In such circumstances, we are of the view that the grievance of the petitioner

cannot be rejected on the ground of laches or inaction on his part. It is clear that, while passing the impugned order on 2.11.2000, the authority,

who passed the said order, had not taken note of the final order dated 29.11.1984 passed by the Commandant, Central Industrial Security Force

Unit, Calcutta Port Trust (Ministry of Home Affairs) exonerating the petitioner from the charges framed against him.

10. Accordingly, the impugned proceedings dated 02.11.2000 is set aside. The second respondent herein is directed to consider the case of the

petitioner in the light of the reasons mentioned above and pass orders accepting his claim within a period of three months from the date of receipt of

copy of this order.

11. Writ Petition is allowed to the extent mentioned above. No costs.