
(2010) 07 MAD CK 0275

In the Madras High Court

Case No : Writ Petition No. 45560 of 2006 (T) and O.A. No. 2134 of 2000

G.L. Desan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1)

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Citation : (2010) 07 MAD CK 0275

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : S. Vadivelu, for the Appellant; S. Gopinathan, AGP, for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—The petitioner, while serving as Deputy Superintendent of Police, was issued with a charge memo dated 21.03.1996. In view of that, he was placed under suspension on 16.08.1995. The petitioner name was included at Sl. No. 1 in the temporary panel of Deputy Superintendent of Police, Category 2, for the year 1984-85 approved in G.O. Ms. No. 1517, Home Department, dated 25.06.1985, along with his junior S. Govindarajan, who was included at Sl. No. 2 in the same temporary panel. After his inclusion in the panel of Deputy Superintendent of Police for the year 1984-85, since he was placed under suspension on 16.08.1995, he was informed by the Government that his name could not be included in the regular panel of Deputy Superintendent of Police, in view of his suspension. However, the suspension order was revoked by the Government on 16.12.1995. Thereafter, the petitioner was allowed to work as Deputy Superintendent of Police. In the meanwhile, he was issued with a charge memo dated 21.03.1996 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Subsequently, the petitioner also retired from service on 31.08.98 on reaching the age of superannuation. After the petitioner's retirement from service, the Director General of Police, accepting the

petitioner's representation dated 15.04.1998 made to the Government for his promotion, recommended the case of the petitioner for promotion to include his name at Sl. No. 1 below his senior Mr. Baskar David and above his junior Mr. S. Govindarajan, in the panel of Additional Superintendent of Police, Armed Reserve for the year 1995-96. The above recommendation made by the Director General of Police also mentions that the petitioner is eligible for promotion as Additional Superintendent of Police, Armed Reserve and Deputy Commissioner of Police, Armed Reserve in the normal course on par with his junior. The Government, subsequently, accepted the enquiry report submitted by Mr. Singaravelu Commission. On the basis of the enquiry report, the Government also issued orders dropping further action on the disciplinary proceedings, on 31.08.1998. On that basis, the petitioner was allowed to retire with effect from 31.08.1998. Subsequently, the Director General of Police made further recommendation to the Government on 21.06.1999, stating that since the petitioner had already retired from service on superannuation on 31.08.1998, he may be given paper promotion as Additional Superintendent of Police, Armed Reserve and Deputy Commissioner of Police, Armed Reserve retrospectively on par with his junior along with proper pay fixation as per Rule 17 under FR 27. But, the Government has rejected the recommendation made by the Director General of Police. Aggrieved by the rejection order, the present OA came to be filed.

2. Learned Counsel appearing for the petitioner submits that since the charges made against the petitioner were already dropped by the Government, on accepting the recommendation made by Mr. Singaravelu Commission of enquiry, on 31.08.1998 and subsequently, the petitioner was also allowed to retire on 31.08.1998, in view of the ratio laid down by the Hon''ble Apex Court in the case of C.O. Arumugam and Ors. v. The State of Tamil Nadu and Ors. reported in 1990(1) SL 288 the petitioner should be given all the benefits and promotion and also all other consequential service benefits. Since the charges made against the petitioner were ultimately dropped, the petitioner was also allowed to retire without any disciplinary proceedings on the date of his retirement on 31.08.1998.

3. On the other hand, learned Counsel appearing for the respondents submits that the rejection order made by the Government specifically mentioned that the petitioner is not entitled to get the benefit of promotion as well as pay fixation, since the petitioner was not exonerated from the charges. On that basis, prayed for dismissal of the writ petition.

4. Heard the learned Counsel appearing on either side and perused the materials available on record.

5. Admittedly, the petitioner gave room for issuance of charge memo dated 21.03.1996. However, the Commission of enquiry, headed by the retired Judge of this Court Mr. Singaravelu, found the petitioner not guilty on the charges levelled against him. Accepting the findings of the Commission of enquiry, the Government also finally dropped all the disciplinary proceedings. Subsequently, the petitioner also retired from service on attaining the age of superannuation.

Useful reference can be had from the judgment of the Hon''ble Apex Court in the case of C.O. Arumugam and Ors. v. The State of Tamil Nadu and Ors. reported in 1990(1) SL 288 which holds thus:

It is necessary to state that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Article 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principle. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall be given the promotion with retrospective effect from the date on which their juniors were promoted.

In view of the ratio laid down by the Apex Court, since the charges levelled against the petitioner also came to be exonerated and as a result, the petitioner was also allowed to retire from service on reaching the age of superannuation, the petitioner is entitled to have the promotion as well as all the service benefits retrospectively from the date on which he was placed under suspension, on par with his junior S. Govindarajan.

6. For the aforesaid directions, the present writ petition is allowed. No Costs.