
(2014) 01 MAD CK 0229
In the Madras High Court
Case No : W.P. No. 31192 of 2005

M. Natarajan

APPELLANT

Vs

The Principal Chief Conservator of Forest

RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Citation : (2014) 01 MAD CK 0229

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Raja, J.—The petitioner seeks for issuance of a writ of certiorarified mandamus to quash the order passed by the respondent in proceeding No. AB1/61200/2004, dated 09.05.2005, and also consequential order in Ref. No. AB1/44512/2005, dated 30.08.2005, by calling for the records connected thereto and consequently to direct the respondent to promote the petitioner as Forester from the date of his immediate junior (Mr. J. Subramaniam) was promoted and confer all consequential benefits.

2. Heard both sides.

3. The only grievance of the petitioner is that he was not selected and included in the panel of Forest Guards fit for promotion to the post of Forester for the year 2004-2005 on the ground that he was imposed with a punishment of postponement of increment for a period of three months without cumulative effect, vide order dated 25.03.1999, for the incident took place in the year 1998. The crucial date for preparing the panel was on 15.08.2004, and that the punishment imposed was within five years of check period, the petitioner's name was not included in the panel for promotion to the post of Forester. In this context, it is pertinent to refer to a Government Letter No. 248, Personnel & Administrative Reforms (S) Department, dated 20.10.1997, whereby the Government framed certain guidelines with regard to effect of punishments on

inclusion in the panel. The relevant portion of the said letter is extracted hereunder:--

II. Effect of Punishments on inclusion in the panel

1) As warning or severe warning is not a statutory punishment and since there is no provision for appeal, it need not be held against the officer, whether it was awarded after framing of charges under Rule 17(a) or 17(b) of Tamil Nadu Civil Services (D&A) Rules.

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.

A mere reading of the above said proceeding clearly depicts that if an officer was imposed with any of the punishments within the check period for irregularities/delinquencies, which occurred five years prior to the date of punishment, such punishment need not be held against him. Fortunately, in the present case, instruction issued by the Government in G.O.Ms. No. 368, Personnel and Administrative Reforms Department, dated 18.10.1993, introducing check period has been quashed by this Court, making it clear that the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over in the name of "check period", namely, one year in the case of censure and five years in the case of other minor punishments, is illegal and impermissible under the Statutory Rules. In the present case, the petitioner was imposed with a punishment of postponement of increment for a period of three months without cumulative effect on 17.06.1999 in respect of the occurrence that had taken place in the year 1998. While that being so, his name should have been included in the panel prepared for the year 2004-2005, since the period of five years check period was struck down by this Court in the case of The Deputy Inspector General of Police and The Director General of Police Vs. V. Rani, .

4. Therefore, for the reasons mentioned above, the impugned order is set aside and the writ petition stands allowed. Consequently, the respondent is directed to promote the petitioner as Forester from the date on which his immediate junior Mr. J. Subramaniam, was promoted, and confer all the consequential benefits. The respondent is directed to complete the said exercise within a period of six

weeks from the date of receipt of a copy of this order. No Costs.