
(2006) 10 MAD CK 0057
In the Madras High Court
Case No : Writ Petition No. 20459 of 2006

N. Raman

APPELLANT

Vs

State of Tamil Nadu and J. Jeyaraj

RESPONDENT

Date of Decision : 18-10-2006

Acts Referred:

Tamil Nadu Prison Service Special Rules — Rule 4, 5
Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 39

Citation : (2006) 10 MAD CK 0057

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : S. Vadivelu, for the Appellant; V. Arun, Government Advocate for R1, for the Respondent

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—The petitioner was directly recruited to the post of Jailor in the year 1977. He was promoted as Additional

Superintendent of Prisons in the year 1986. His name was included in the panel for promotion to the post of Superintendent of Prisons in the year

1989 and he was actually promoted as Superintendent of Prisons on 01.12.1989.

2. On 30.01.1996, the Government issued G.O.Ms. No. 139 Home (Prison I) Department dated 30.01.1996, ordering the promotion of certain

Superintendents of Prisons as Deputy Inspectors General of Prisons. Contending that the second respondent was not even qualified and also

happened to be a junior to the petitioner and that the petitioner's case for promotion was overlooked arbitrarily, the petitioner filed O.A. No.

1746 of 1996 on the file of the Tamil Nadu Administrative Tribunal. On the abolition of the Tribunal, the said Application has been transferred to

this Court in W.P. No. 20459 of 2006.

3. I have heard Mr. S. Vadivelu, learned Counsel appearing for the petitioner and Mr. V. Arun, learned Government Advocate appearing for the first respondent.

4. The post of Deputy Inspector General of Prisons falls under Category 2 of Class I of the Special Rules for Tamil Nadu Prison Service. Rule 4

of the said Special Rules prescribes that for appointment to the categories of posts under the said service, an annual list of approved candidates is

to be drawn up every year by considering the names of candidates, who are qualified as on 15th day of February of every year. Rule 5 of the said

Special Rules prescribes the method of appointment as well as qualifications prescribed for appointment to the categories of posts under the said

service. Insofar as the post of Deputy Inspector General of Prisons is concerned, Rule 5 prescribes that it shall be filled up by method of

promotion from among persons, who have served as Superintendent of Central Prisons for a period of not less than five years. Thus, it is clear

from a conjoint reading of Rules 4 and 5 that the first respondent is obliged to prepare an annual list of candidates, including the names of those

who are fully qualified for promotion to the post of Deputy Inspector General of Prisons.

5. Instead of resorting to the legal method of preparation of panels every year, the first respondent seems to have resorted to the grant of

temporary promotions under the impugned order and in that said order, the second respondent has been promoted. There is no dispute about the

fact that the second respondent is a junior to the petitioner. There is also no dispute about the fact that the 2nd respondent had not completed 5

years of service in the feeder category, to become eligible for promotion.

6. The respondents have filed a reply affidavit, raising only two contentions for the denial of promotion to the petitioner. They are; (1) that the

petitioner suffered certain adverse remarks in his confidential files and that he also had the penalties of censure imposed upon him and (2) that the

impugned order was only an order granting temporary promotion and was not a panel, which could give rise to a cause of action for the petitioner.

7. In my considered view, both the contentions raised by the respondents are legally untenable. Insofar as the adverse remarks are concerned, the

first respondent has not even specified the dates on which the adverse remarks were entered and the kind of adverse remarks allegedly entered.

Admittedly, those adverse remarks were never communicated to the petitioner. Entry of adverse remarks in the confidential records of a

Government Servant, is not an empty formality to be kept as a close secret by the Government. They are intended to put a person on notice so

that his performance over the period should improve. Since the first respondent has not communicated the alleged adverse remarks and also since

no details of those adverse remarks are spelt out in the reply affidavit, the failure of the first respondent to promote the petitioner on the basis of the

so called adverse remarks cannot be sustained. Insofar as the penalties of censure are concerned, it is seen from para 14 of the reply affidavit that

those penalties related to the year 1985, 1986, 1987, 1988, 1992 and 1993. Under various Government Orders, the penalty of censure is to have

currency for a period of one year only. Therefore, on the date of which the impugned orders of promotion were issued on 30.01.1996, the

penalties of censure did not have currency. Consequently, the failure of the first respondent to promote the petitioner even on this score is legally

untenable.

8. It is the second contention of the first respondent that what was issued was only a temporary promotion order and that therefore, the

prescription of service qualification under the Special Rules need not be adhered to. I find such a contention to be shocking. Rule 39(a)(i) of the

General Rules for Tamil Nadu State and Subordinate Services, under which the impugned promotion order was issued, makes it clear that even

temporary appointments made without preparation of panels, should be granted only to candidates, who are fully qualified for such appointments.

Rule 39(a)(i) cannot be taken as a licence for promoting unqualified hands. Rule 39(a)(i) reads as follows:

Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a

higher category in service or class by promotion from lower category and there would be undue delay in making such promotion in accordance

with the rules, the appointing authority may temporarily promote a person, who possess the qualifications prescribed for the post, otherwise than in

accordance with the rules.

9. A bare perusal of the said Rule makes it clear that unqualified hands cannot be promoted even temporarily. The first respondent has admitted in the reply affidavit that the second respondent did not even fulfil the requirement of five years of qualifying service in the post of Superintendent of Prisons, on the date on which the promotion order was passed. Therefore, the promotion of the second respondent, who was unqualified on the date of the order of promotion, is legally unjustified. Consequently, the failure of the first respondent to promote the petitioner to the post of Deputy Inspector General of Prisons cannot be legally sustained and hence the petitioner is entitled to succeed.

10. In view of the fact that the petitioner has already attained superannuation, the first respondent is directed to grant notional promotion to the petitioner to the post of Deputy Inspector General of Prisons with effect from 30.01.1996. Though the petitioner will not be entitled to monetary benefits up to the date of his retirement, consequent upon such notional promotion, his terminal benefits and pensionary benefits may be reworked and such an exercise may be completed by the first respondent within a period of three months from the date of receipt of a copy of this order and appropriate orders be passed.