

(2012) 02 MAD CK 0103
In the Madras High Court
Case No : Writ Petition No"s. 19392 of 2009

P. Pandiyaraj

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 20-02-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

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

Citation : (2012) 02 MAD CK 0103

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : P. Jayaraman, for Mr. G. Elanchezhiyan, for the Appellant; V. Jayaprakash Narayan Additional Government Pleader, for the Respondent

Judgement

Honourable Mr. Justice M. Jaichandren

1. Heard the learned Senior Advocate appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

The petitioner has stated that he was, initially, appointed as an Assistant Engineer, on 17.6.1981, and thereafter, he had been promoted as an

Assistant Divisional Engineer, on 4.4.2005. After working at various stations he had been transferred and posted at the office of the Assistant

Divisional Engineer, National Highways Quality Control Sub-division, Madurai South, Madurai.

2. While he was working as an Assistant Engineer at the Sengottai Panchayat Union, he was issued with a charge memo, under Rule 17(b) of the

Tamilnadu Civil Services (Discipline and Appeal) Rules, 1955, on 14.11.1995, by the then Chief Engineer, High ways. The petitioner had been

instructed to submit his explanation, in respect of the charges levelled against

him. The petitioner has stated that the charges levelled against him are as follows:

Charge No. 1: That he had not handed over the M.Books 344A, 1315C and 1307C relating to the work of improving and widening the carriage

way from single lane to double lane in Aralvoimozhi, Nedumangadu Road KM.0/0-4/0 AND 4/0-b/0 to his successor of Thovalai section and

thereby he had deserted his duties and responsibilities as Assistant Engineer.

Charge No. 2: That he had handed over the M.Book 344A, 1315C and 1307C to the Asst. Divisional Engineer Thiru J.Thangaraj Christopher

illegally correct the check measurement etc. after his relief from the Thovalai Sec. without obtaining any acknowledgment from the Asst. Divi. Engr.

and thereby he had misused his powers and failed to maintain integrity and devotion to duty.

3. It had also been stated that he had submitted a detailed explanation to the Chief Engineer, Highways, stating that he had not deserted his duties

and responsibilities and that he had not misused the official position, as alleged in the charge memo, and that no loss had been caused to the

Government. Thereafter, an enquiry officer had been appointed to enquire into the charges levelled against the petitioner. The enquiry officer had

conducted the enquiry and had submitted his report with the finding that the charges levelled against the petitioner had been proved. The enquiry

report had been furnished to the petitioner asking him to submit a further explanation, if any. On submission of the further explanation, the State

government, without considering the said explanation submitted by the petitioner, properly, had passed a final order imposing the punishment of

censure against the petitioner, in G.O.(3D) No. 73, (Highways HL.1) Department, dated 6.5.2002.

4. The petitioner had further stated that he was eligible and entitled to the promotion, as an Assistant Divisional Engineer, in the year 1999-2000

itself. However, his name had not been considered for promotion on the ground that the disciplinary proceedings initiated against him were

pending. Thereafter, the petitioner had not been considered for such promotion, even for the years 2000-2001, 2001-2002 and 2002-2003, due

to the currency of the punishment of censure. He was considered for promotion to the post of Assistant Divisional Engineer only in the year 2003-

2004.

5. In such circumstances, the petitioner had requested that his pay should be fixed on par with his junior T.K.Balasubramaniyan, who had been

promoted as an Assistant Divisional Engineer, in the year 2001. However, the request of the petitioner had not been considered by the authorities

concerned, even though the State Government had ordered retrospective promotion in other similar cases. Thereafter, the petitioner had made a

representation, to the State Government, to consider his case for promotion, as an Assistant Divisional Engineer, on par with his junior and to fix his

seniority accordingly. Since, no orders had been passed on the said representation, he had filed a writ petition before this Court, in W.P.No.

24706 of 2007, to consider his representation and to pass an appropriate order, in the light of the government orders, in G.O.Ms.No. 344, Public

Works (HK-1) Department, dated 9.5.1995 and G.O.Ms.No. 157, Public Works (H-1) Department, dated 25.2.1996. This Court, by its order,

dated 21.7.2007, had directed the respondents to consider the request of the petitioner and to pass an appropriate order thereon.

6. Pursuant to the said order, the representation of the petitioner had been considered by the State Government and an order had been passed

accepting the request of the petitioner, partly. Thereafter, the first respondent had rejected the claims of the petitioner, on 28.8.2009, on the

ground of the currency of the punishment imposed on the petitioner. In such circumstances, the petitioner has preferred the present writ petition

before this Court, under Article 226 of the Constitution of India.

7. The learned counsel for the petitioner had submitted, inter alia, that the orders passed by the first respondent, on 6.5.2002 and 28.8.2009, are

arbitrary, illegal and contrary to Articles 14 and 16 of the Constitution of India. It had been stated that the charge memo had been issued against

the petitioner on 14.11.1995, for the occurrence alleged to have taken place during the year 1988-1989. The enquiry report had been submitted,

on 20.4.1998, and the punishment of censure had been imposed on the petitioner, on 6.5.2002. The respondent had taken nearly 13 years to

complete the proceedings initiated against the petitioner. No explanation has been given by the respondents for the inordinate delay in concluding

the proceedings. Further, the enquiry officer had not examined the prosecution

witnesses, in order to prove the charges levelled against the petitioner. However, the enquiry officer had held that the charges had been proved. As such, it is clear that the enquiry conducted by the enquiry officer is perverse in nature.

8. The learned counsel for the petitioner had further submitted that no reasonable opportunity had been given to the petitioner to defend himself against the charges levelled against him, during the enquiry. No opportunity had arisen for the petitioner to cross examine the prosecution witnesses, as they had not been examined by the enquiry officer.

9. The learned counsel for the petitioner had further stated that the framing of the charges against the petitioner was contrary to the government guidelines issued for the said purpose. Though the charges were flimsy in nature, they had been framed, under Rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules, 1955, instead of the charges being framed, under Rule 17(a) of the said Rules. Based on the charges framed against the petitioner a punishment of censure had been imposed on him, depriving him of the chances of promotion, on three occasions.

Further, it is clear that the punishment of censure had been imposed on the petitioner in a highly vindictive manner.

10. It had been further stated that this Court had held, in a number of similar cases, that the authority concerned ought to have framed the charges only under Rule 17(a) of the Tamilnadu Civil Services (Discipline and Appeal) Rules, 1955, when the charges are not serious in nature. Hence, the petitioner ought to have been considered for promotion, for the post of Assistant Divisional Engineer, for the year 1999-2000, on par with his junior, as prayed for by the petitioner.

11. A counter affidavit, dated 3.5.2011, had been filed on behalf of the respondents, denying the averments and allegations made by the petitioner, in his affidavit filed in support of the writ petition. It has been stated that the petitioner's name was considered for the post of Assistant Divisional Engineer, for the year 1999-2000, as per his seniority. However, his name had not been recommended for promotion, for the years 1999-2000, 2000-2001 and 2001-2002, due to the pendency of the charges levelled against him, under Rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules, 1955. Thereafter, his name could not be included in the panel

for the subsequent years 2002-2003 and 2003-2004, as he had been awarded the punishment of censure, in G.O.(3D) No. 73, (Highways HL.1) Department, dated 6.5.2002.

12. The petitioner's name had been finally included in the Assistant Divisional Engineer's panel, for the year 2004-2005, issued in G.O.Ms.No.

66, Highways Department, dated 18.3.2005, and he has been working as an Assistant Divisional Engineer, with effect from 18.3.2005. The

petitioner has approached this Court, belatedly, claiming that he should have been considered for promotion, as an Assistant Divisional Engineer,

during the year 1999-2000. His claim that the charges ought to have been framed, only under Rule 17(a) of the Tamilnadu Civil Services

(Discipline and Appeal) Rules, 1955, and not under 17(b) of the said Rules, cannot be sustained, as he should have challenged the framing of the

charges at the relevant point of time.

13. The charges levelled against the petitioner, being serious in nature, had been rightly framed, under Rule 17(b) of the Tamilnadu Civil Services

(Discipline and Appeal) Rules, 1955. Thereafter, based on the enquiry report submitted by the enquiry officer, the petitioner had been imposed

with the punishment of censure. The petitioner's name could not be considered for promotion, as an Assistant Divisional Engineer, for the years

1999-2000, 2000-2001, 2001-2002 and 2002-2003, due to the pendency of the disciplinary proceedings initiated against him and due to the fact

that the punishment of censure had been imposed on him. As such, the claims made by the petitioner that he should be granted the promotion, as

an Assistant Divisional Engineer, from the year 1999-2000, as prayed for by him, cannot be granted. As such, the writ petition filed by the

petitioner is devoid of merits and therefore, it is liable to be dismissed.

14. In view of the submissions made by the learned counsels appearing on behalf of the petitioner, as well as the respondents, and on a perusal of

the records available, it is seen that the name of the petitioner had not been included in the panel for promotion, to the post of Assistant Divisional

Engineer, for the year 1999-2000, due to the pendency of the disciplinary proceedings initiated against him. The disciplinary proceedings had been

initiated against the petitioner, based on the charges framed, under Rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules,

1955.

15. It cannot be said that the charges framed against the petitioner, by way of a charge memo, dated 14.11.1995, are serious in nature. There is no charge of misappropriation or fraud, alleged to have been committed by the petitioner. Further, no loss had been caused to the State Government, due to the acts said to have been committed by the petitioner. As such, the charges ought to have been framed, as per the guidelines issued by the government for the framing of such charges. In similar circumstances, this Court had held, in the writ petitions, in W.P.No. 3558 of 2004, W.P.No. 19144 of 2004, and W.P.No. 22975 of 2005, that the charges ought to have been framed against the alleged delinquent only under 17(a) of the Tamilnadu Civil Services (Discipline and Appeal) Rules, 1955. Further, it has been stated that the orders passed by this Court, in the said writ petitions had become final and that the respondents had also implemented the said.

16. It is also noted that the petitioner has been making several representations to the authorities concerned for the inclusion of his name in the panel, for the year 1999-2000, for being considered for promotion to the post of Assistant Divisional Engineer, from the year 2003. However, the final rejection of his request had been made only in the year 2009, by way of the impugned proceedings. As such, it cannot be said that the petitioner had approached this Court, belatedly. Further, the respondents had considered the claims of similarly placed persons and had granted them the promotion due to them, as per their seniority, pursuant to the orders passed by this Court. While so, it would not be appropriate for the respondents to reject the claims made by the petitioner, whose case is similar in nature. In such circumstances, the impugned proceedings of the respondents are set aside. Accordingly, this Court finds it appropriate to direct the respondents to consider the claim of the petitioner for being promoted to the post of Assistant Divisional Engineer, on par with his juniors, as prayed for by him, if he is otherwise eligible for such promotion and pass appropriate orders thereon, as expeditiously as possible. The writ petition is ordered, accordingly. No costs.