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(2011) 04 MAD CK 0496

In the Madras High Court

Case No : Writ Petition No. 14261 of 2007 (O.A. No. 3071 of 2003)

P.D. Mahadevan — APPELLANT

Vs

Secretary to Government, Rural Development Department, Chennai - 9 and Another — RESPONDENT

Date of Decision : 12-04-2011

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

Citation : (2011) 6 MLJ 419

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : S.M. Subramaniam, for the Appellant; L.S.M. Hasan Fizal, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—Being aggrieved by the order, dated 22.10.2002, passed by the Secretary to the Government, Rural Development Department, Chennai, first respondent herein, rejecting the request of the petitioner for advancement to Selection Grade, the petitioner, a retired Block Development Officer, Villivakkam, Tiruvallur District has preferred Original Application before the Tamil Nadu Administrative Tribunal, which has been subsequently transferred to this Court and re-numbered as present writ petition.

2. At the time of filing of the Original Application before the Tamil Nadu Administrative Tribunal, Chennai, the petitioner was aged 62 years. According to the petitioner, he entered the Department as Junior Assistant in the year 1967, through Tamil Nadu Public Service Commission and gradually, promoted to the post of Block Development Officer on 19.8.1987 and rendered 12 years of service in the same capacity. On attaining the age of superannuation, he retired from service on 31.5.1999. It is the grievance of the petitioner that though he had completed 10 years of service in the above said post, the respondents have denied Selection Grade scale of pay in the same post. Though he was due for

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promotion to the post of Divisional Development Officer in the year 1994-95, the same was denied on the ground that he was facing a charge under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which ended in imposing a punishment of stoppage of increment for six months without cumulative effect. Though the petitioner did not pursue his case for promotion, all along, he has requested the respondents to grant Selection Grade scale of pay in the post of Block Development Officer. But, by impugned order, dated 22.10.2002, his request has been rejected.

3. Assailing the correctness of the impugned order, Mr. S.M. Subramaniam, learned counsel for the petitioner submitted that the stoppage of increment for a period of six months without cumulative effect, is a minor punishment and therefore, the respondents ought to have granted Selection Grade scale of pay in the post of Block Development Officer, as there was stagnation in the same scale for more than 10 years.

4. In support of the relief sought for, he also placed reliance on the Government instructions in Letter No. 5381/S/94-7, P & AR, dated 24.2.1995. which states that in cases of persons undergoing punishment of stoppage of increment with or without cumulative effect or of reduction to lower stage in the time scale, they should also be considered for movement to Selection Grade or Special Grade, based on the instructions of the Government and if anyone is considered fit for movement to Selection Grade or Special Grade, monetary value equivalent to the increments be withheld for the unexpired period, or monetary value equivalent to the amount representing the difference between the normal stage and the reduced stage for the unexpired period, as the case may be, shall be recovered. It is his further submission that the above said Government instructions also permitted advancement to Selection Grade or Special Grade, in the case of a person undergoing punishment of reduction to a lower rank in the seniority list, on and from the date on which, the punishment has ended or the immediate junior with reference to the lower rank moves to the Selection Grade or Special Grade, whichever is earlier.

5. Referring to the Government instructions contained in Letter Ms. No. 248 P & AR (S) Department, dated 20.10.1997, learned counsel for the petitioner further submitted that even if an officer is imposed of any punishment, other than ''Censure'', within the check period of five years, prior to the crucial date, and if such punishment is imposed for the irregularities/delinquencies, which occurred five years, prior to the date of punishment, the government instructions are to the effect that while considering his case for promotion, the punishment need not be held against him and he therefore submitted that three separate punishments of stoppage of increment imposed between 1990-92, ought not to have been considered for denying Selection Grade scale of pay to the post of Block Development Officer, as the said punishments were imposed for the incidents. which occurred five years prior to the check period and the date on which, the petitioner completed 10 years of service in the post of Block Development Officer,

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i.e., on 19.8.1997. He further submitted that stoppage of increment is also a minor punishment, like, Censure, Fine, Recovery, etc., and therefore, the same should not be held against the petitioner, for advancement of Selection Grade.

6. Based on the averments in the counter affidavit filed by the Deputy Secretary to Government, Rural Development Department. Chennai, Mr. LSM. Hasan Fizal, learned Government Advocate submitted that the petitioner was promoted as Block Development Officer on 19.8.1987. He further submitted that between 1987 and 1997, the petitioner was imposed with punishments of stoppage of increment, on four occasions. Though his name was considered for promotion to the post of Divisional Development Officer, for the year 1994-95, he was not included in the panel, as he was facing disciplinary proceedings under Rule 17(b) of the above said Rules.

7. Learned Government Advocate further submitted that as per G.O. Ms. No. 68, Personnel and Administrative Reforms Department, dated 23.1.1986, conditions prescribed for promotion have to be followed, while considering the case for advancement to Selection Grade. Further, the Government in G.O. Ms. No. 368, Personnel and Administrative Reforms Department, dated 12.10.1993, have issued orders to the effect that the punishments awarded should be held against the individuals for promotion. He therefore submitted that when the representation of the petitioner for advancement to Selection Grade was examined, with reference to the above said Government Orders, the Government negatived the request in their letters No. 20843/E6/ 2002-1&2, Rural Development Department, dated 3.6.2002 and 22.10.2002 respectively, stating that the petitioner has been imposed with punishments of stoppage of increment on many occasions.

8. According to the learned Government Advocate, all other normal criteria for promotion to a higher post, viz., seniority, Good or Satisfactory record of Service, the nature of punishment imposed on the employee and the lapses for which the punishments were imposed, the pendency of charges or enquiry by Directorate of Vigilance and Anti-Corruption, etc., are the factors to be taken into account, while considering the case of a Government servant for advancement to Selection Grade and in the light of the above guidelines, the case of the petitioner has rightly been rejected. For the reasons stated supra, he prayed for dismissal of the writ petition.

Heard the learned counsel for the parties and perused the materials available on record.

9. Before adverting to the rival submissions, regarding the claim for advancement to Selection Grade in the post of Block Development Officer, it is worthwhile to consider a decision of the Apex Court in Lalit Mohan Deb and Others Vs. Union of India (UOI) and Others, , wherein the Supreme Court explained, what "Selection Grade" means and the Government guidelines, dealing with conferment of Selection Grade/Special Grade.

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10. In Lalit Mohan Deb v. Union of India (supra) case, "Selection Grade", has been explained as follows:

A promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post. A selection grade is intended to ensure that capable employees who (sic) may not get a chance of promotion on account of limited outlets of promotions should atleast be placed in the selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency.

11. In the above judgment, the Supreme Court considered the recommendations of the Central Pay Commission, recognising payment of higher-scale of pay to the employees, who have no outlets or limited outlets for higher posts. Paragraph 10 of Chapter X of the report, considered by the Supreme Court, is reproduced hereunder:

The Commission observed "with the object of providing incentive to employees who have no outlets or very limited outlets for promotion to higher posts, we are recommending in a number of cases that a certain percentage of the posts in the grade -usually 10 per cent. - should carry a somewhat higher scale of pay even though there will be no change in the duties. Following the terminology in vogue we have described these posts as selection grade posts.

12. At Paragraph 9, the Supreme Court in the above judgment, further held that,

But the absence of such rules is no bar to the Administration giving instructions regarding promotion to the higher grade as long as such instructions are not inconsistent with any rule on the subject. The point was considered by this Court in Sant Ram Sharma Vs. State of Rajasthan and Another, and it was declared that in the absence of statutory rules regulating promotion to selection grade posts the Government is competent to issue administrative instructions as long as those instructions are not inconsistent with the rules already framed.

13. No statutory rules have been brought to the notice of this Court, by which, selection grade posts have been notified. But, executive instructions have been issued by the Government for advancement to Selection Grade/ Special Grade. Earlier, the Government have issued orders in G.O. Ms. No. 214. Personnel and Administrative Reforms (Per. M) dated 1.3.1979, by which, all the employees, who had put in 10 years of service, whether they were qualified for promotion to higher posts or not, on completion of 10 years of service, were made eligible for Selection Grade/Special Grade. Subsequently, by amendment in G.O. Ms. No. 458, Personnel and Administrative Reforms (Per. M) dated 15.4.1980, the expression ''Satisfactory service'' has been deleted. In the above said circumstances, the Government in Letter No. 90842/A.H.L./80-4, Agriculture Department, dated 31.12.1980, has clarified as follows:

3. In the above circumstances, I am directed to clarify as follows:

(i) In the case of officers who suspension period has not been regularised.

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If the period of 10 years of service is satisfied including the suspension period, then selection grade may be given.

(ii) In the case of officers against whom disciplinary action is pending.

Section grade may be given if the period of 10 years of service is satisfied, irrespective of the fact that charges are pending.

14. Subsequently, based on the Fourth Tamil Nadu Pay Commission, the Government in G.O. Ms. No. 68 P & AR (Per. M), dated 23.1.1986, issued revised guidelines for advancement to Selection Grade/Special Grade, that on completion of 10/20 years of satisfactory service, in the ordinary Grade and Selection Grade respectively, wherever, it has been provided. G.O. Ms. No. 68 P & AR (Perm), dated 23.1.1986, wherein, the Government have consolidated the guidelines issued earlier and pressed into service by both parties, is extracted hereunder:

Government of Tamil Nadu

Abstract

Public Service - Advancement to Selection Grade/Special Grade posts in various services under Heads of Departments/Secretariat - Guidelines - issued.

(G.O. Ms. No. 68, Personnel and Administrative Reforms (Per. M), dated the 23.1.1986

Read:

1. G.O. Ms. No. 89, P & AR (Per. M) dated 27.1.1977

2. G.O. Ms. No. 1050, Finance (PC) dated 5.10.1978

3. G.O. Ms. No. 214, P& AR (Per. M) dated 1.3.1979

4. G.O.Ms. No. 215. P & AR (Per.M)dated 1.3.1979

5. G.O.Ms. No. 458, P&AR (Per. M) dated 15.4.1980

6. G.O. Ms. No. 459, P & AR (Per. M) dated 15.4.1980

7. Govt. Lr. No. 43632/P & AR (Per. M). dated 7.6.1980

8. G.O.Ms. No. 571, P&AR(Per.M)dated 2.6.1981

9. G.O. Ms. No. 572, P & AR (Per. M) dated 2.6.1981

10. G.O. Ms. No. 184, P & AR,(Per. M) dated 1.3.1984

11. G.O. Ms. No. 185, P & AR (Per. M) dated 1.3.1984

12. G.O. Ms. No. 555. Finance (PC) dated 10.6.1985"

Order.

The Government in their order first read above, have ordered that the principle

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of selection should invariably be followed in making advancement to selection grade posts. In the government Order second read above, the Government have accepted the recommendation of the Third Pay Commission and provided avenues of advancement on completion of ten years'' service to selection grades and twenty years for special grades, for large number of categories in order to relieve stagnation amount Government Servants. They have also ordered that movement to the Selection Grade and Special Grades will be on completion of 10 years of "Satisfactory Service" in the ordinary grade and Selection Grade respectively. Accordingly, guidelines were issued in regard to making advancement to Selection Grade/Special Grade posts under Heads of Departments/Secretariat in the order third and fourth read above. Consequent on certain representation, the government decided that advancement to Selection Grade/Grade posts be made on completion of 10/20 years of service.

2. The Tamil Nadu Fourth Pay commission while recommending retention of the scheme for provision of Selection/Special Grades has emphasized that the criterion of "Satisfactory Service" originally recommended by the Third Pay Commission for movement to Selection/Special Grades should not be given a go-by in the interests of standards of efficiency in administration and that the same criterion as for promotion should form the basis hereafter for granting Selection Grade/Special Grade on completion of 10/20 years of service.

3. The Government, after careful consideration, have decided to accept the above recommendation of the Tamil Nadu Fourth Pay Commission. They accordingly; direct that the guidelines already issued in the Government Orders 3 to 11 read above be superseded and the following fresh guidelines be followed hereafter, while moving the Government employees to Selection/Special Grades:

(i) For advancement to Selection Grade/Special Grades, all employees, who have put in 10/20 years of satisfactory service and who satisfy all the qualifications prescribed under the Special Rules/Ad hoc Rules prescribed for promotion to the higher post shall be eligible:

(ii) All other normal criteria for promotion to a higher post, viz.., seniority, good or satisfactory record of service, the nature of punishments imposed on the employee and the lapses for which the punishments were imposed, the pendency of charges or disciplinary proceedings or enquiry, by Director of Vigilance and Anti-Corruption, qualifications/tests prescribed under the Special/Ad hoc Rules for the higher post, etc. should be followed while moving the employees to the Selection/Special Grade.

(iii)(a) For the purpose of advancement to Selection/Special Grades, a panel of all eligible employees, who will be completing 10 years/twenty years of service between 1st January to 31st December in a year, shall be prepared before the 15th December of the preceding year and got approved by the appointing authority, in accordance with the guidelines in sub-paragraphs (i) and (ii) above. The actual orders of appointment to Selection/Special Grade of the employees

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concerned shall be issued immediately after the date on which the individual complete 10/20 years of service.

(b) If an employee, who, at the time of preparation of panel does not possess the qualification required but subsequently acquires the qualification before the actual date of completion of 10/20 years of service, the appointing authority shall have the power to include his name in the panel and move him to the Selection/ Special Grade.

(c) Punishment suffered in between the period approval of panel and advancement to Selection/Special Grade may be taken due note of by the appointing authorities before actual issue of orders, moving the persons to the Selection/Special Grades.

(iv) A copy of the approved panel of names for advancement to Selection/Special Grades shall he communicated to the employees whose names were considered (including those whose names have not been included in the panel within a month from the date of the approval of the panel. The person whose name has not been included shall be entitled to prefer an appeal to the next higher authority, within two months from the date of receipt of the communication of the panel;

(v) The cases of persons whose names have not been included in the panel, shall be reviewed, while preparing subsequent panels;

(vi) Service rendered in a lower post on other duty should not be taken into account as qualifying service in the higher post for advancement to the Selection/ Special Grade. The service rendered in an equivalent or higher post on other duty should be taken into account for advancement to Selection/Special Grades, to the extent he should have acted in his original post in the parent department but for his deputation;

(vii) In respect of posts for which the Government are not the appointing authority, the required number of Selection/Special Grade posts can be created and filled up by the appointing authorities themselves keeping in abeyance an equal number of Ordinary Selection Grade posts. They should, however, send details of posts so created to the Heads of Departments/Secretariat immediately after the posts are so created. In respect of posts for which the Government are the appointing authority, the Heads of Department concerned can create the required number of Selection Grade posts and sanction advancement of employees to them. Heads of the Departments should similarly send the details of posts so created to Government in the administrative departments;

(viii) A senior person in the Ordinary/Selection category will also be appointed to the Selection/Special category with effect from the date on which his junior is appointed to the Selection/Special Category even though the senior might not have actually put in the required 10/20 years of service. However, in respect of cases, where junior moves to Selection Grade due to retrospective regularisation

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from a date earlier than the date of regularisation of their seniors, the seniors should be appointed to Selection/Special Grades only after they have completed 10 years of service.

(ix) In respect of the case referred to in item (viii) above, the clarifications and guidelines issued in G.O. Ms. No. 898, Personnel and Administrative Reforms Department, dated 23.9.1983, as modified in Government Letter No. 13841 /84-6, Personnel and Administrative Reforms Department, dated 2.11.1984 shall be scrupulously followed.

(x) The period of ten years in a post will be reckoned from the date of regular appointment but will exclude periods of reversion. Leave other than extraordinary leave without allowances without medical certificate should be taken into account while completing the 10/20 years period.

(xi) These instructions/guidelines will not apply to categories for which there are promotion posts.

4. The guidelines now issued will take effect from 10.6.1985 (i.e., date of the Government Order twelfth read above). Orders already issued, if any, in respect of cases which have arisen for movement to Selection/Special Grades on or after 10.6.1985 should be reviewed in the light of the fresh guidelines now issued.

5. The Scheme of advancement to higher post under Flexible Complementing Scheme shall continue without any change and cases which have arisen after 1.10.1984 shall continue to be processed with reference to the guidelines already issued in G.O. Ms. No. 487, Personnel and Administrative Reforms (Per. M), Department, dated 18.3.1979 and subsequent instructions thereon.

(Emphasis supplied)

15. Subsequently, in continuation of the above said guidelines, the Government in their letter No. 118177/Per-S/86-4, dated 15.5.1987, issued further instructions and at Paragraph 3 (iii) (b) and (c), held that,

(i) A Government Servant whose name has not been included in a previous panel on account of his not possessing the requisite qualifications at the time of preparation of panel but included subsequently on acquiring the said qualification can be moved to selection Grade with effect from the date on which such persons acquire the qualifications.

(ii) An employee, whose name has not been included in the panel even after completing 10 years of service because of pendency of charges and subsequently fully exonerated of all charges can be moved to selection Grade from the date on which he completes 10 years of service.

(iii) In the case of Government Servants who have suffered minor punishments such as censure etc., after detailed examination enquire, the appointing authority may have the power of advancing them to selection Grade with effect from the date on which such persons complete 10 years of service.

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(iv) In the case of persons who have not been include in the previous list because of punishments such as stoppage of increments, whether it is with cumulative or without cumulative effect, reduction to a lower stage or to a lower rank but subsequently included after the expiry of the said period may be moved to selection grade only with effect from the crucial date of the panel, i. e., 15th December of that year, in which such persons have been included.

(Emphasis supplied)

16. G.O. Ms. No. 368 Personnel and Administrative Reforms, dated 18.10.1993. deals with preparation of the panel, for promotion to higher post. Clause 4 of G.O. Ms. No. 368 Personnel and Administrative Reforms, dated 18.10.1993 reads as follows:

(1) As per the orders in the Government sixth read above, in the case of pending enquiries including vigilance enquiries and in case where specific charges have not been framed, promotions and appointments shall be considered on the basis of the performance of the officers coming under the Zone of Selection as on the date of consideration for promotion/appointment as revealed through the personal Files/Record Sheets and the seriousness of the punishments, if any previously imposed. In cases where specific charges have been framed of charge sheet has been filed in criminal case, promotion/appointment of such persons shall 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 with reference to all relevant criteria, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.

(2) The "Specific Charges" referred to are those framed under Rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules or its equivalent. Mere calling for the explanation of a Government Servant under Rule 17(a) of the said rues need not be treated as a bar for promotion on that score alone. This would equally apply to promotion to the ordinary posts and "Selection Category" posts, as well as to recruitment by transfer from one service to another.

(3) The case of a Government Servant whose promotion, etc., has been deferred, should be reopened after disposal of the charges and appropriate orders should be passed on merits, i.e., (a) giving him his promotion as aforesaid if he was proved innocent and exonerated or acquitted of the charges and if there are no other adverse factors to be reckoned, or (b) denying him the promotion or giving him the promotion from a later date depending upon the nature of punishment and other factors to be reckoned in other cases. In such cases, the Heads of Department must take suo moto action within 15 days from the date of issue of final orders in the department disciplinary case/criminal case.

(4) Wherever the disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules against Government

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Employees are merely stayed by a Court/Tribunal, their cases shall be deferred till the proceedings are concluded, unless a contrary order is passed by the Court/ Tribunal and it is decided not to challenge the same. If on the other hand, the Court/Tribunal Quarterly Charge memo, then the name of the government Employee concerned should be considered for inclusion in the panel for appointment to the higher post by promotion/recruitment by transfer if he is otherwise qualified.

(5) If specific charges are framed or charge sheet is filed in the criminal case before actual promotion, the person concerned shall not be promoted notwithstanding the fact that his name has been included on the panel. The instructions in para (3) above will apply in this case thereafter.

17. Clause 6 of the above Government Order deals with the effect of punishment on promotion/recruitment by transfer and it is extracted hereunder:

(1) The effect of a punishment on promotion/recruitment by transfer will depend upon:

(a) The nature of the higher post, i.e., whether it is a ''Selection Category'' or an ordinary post;

(b) the period during which the irregularity took place; and

(c) the nature of the irregularities (rather than quantum of punishment), for example, an Assistant tears'' off the current file. On the charges framed against him for the above lapse, one officer may merely award him a ''Censure'' taking a lenient view while another officer may impose the punishment of ''stoppage of increment with or without cumulative effect holding the lapse as serious. Yet another officer may even ''dismiss'' him from service holding the lapse as ''grave''. Thus, different officers may take different views and different punishments for one and the same lapse. Therefore, the quantum of punishment is not the objective criterion to access the gravity of the charge.

(2) In SLP (c) No. 14612 of 1991, against the Tamil Nadu Administrative Tribunal''s order in O.A. No. 2851 and 2604 of 1990, the Supreme Court in its Order, dated 19.8.1992 has said that it did not subscribe to the view that punishment and non-inclusion in the panel would amount to ''double jeopardy''. Therefore, the following courses of action are available:

(a) In case of "Selection Category" posts, the inclusion of names in the panel from promotion will be based on merit and ability, seniority being considered only when merit and ability of the contesting candidates are nearly equal. Therefore, strict comparison of the cases of the individuals, over a specified period of service (say 5 years)taken up for analysis, is quite necessary before deciding upon the question of inclusion or exclusion as the scope for subjective satisfaction and interpretation is limited. For the purposes of comparison, the proved irregularities which took place during the said specified period of service have to be taken into consideration whether or not the person concerned was

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proceeded against under Rule 17(a) or Rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. The number of individuals considered for this purpose should be as per the scales laid down in the General Rules, particularly General Rule 4(a).

(b) The same principles as above will have to be followed in the case of recruitment by transfer from one service to another.

(c) For ordinary promotions, the fitness of the person with reference to all relevant factors has to be considered. The unfit persons have to be eliminated. As per as punishments are concerned, (except where a specific punishment of withholding of promotion for a specified period is awarded), it should be examined whether the proved irregularities took place within the specified period of service taken up for analysis and whether the irregularities were such as to make the case is considered for inclusion in the panel for appointment to the higher post by promotion/by recruitment by transfer.

(Emphasis supplied)

18. Subsequently, the Government have issued instructions in Letter No. 5381/ S/94-7, Personnel and Administrative Reforms (S) Department, dated 24.2.1995, for advancement to Selection Grade/Special Grade to the persons, against whom, punishments have been imposed and it reads as follows:

Government of Tamil Nadu

Letter No. 5381/S/94-7,

Personnel and Administrative Reforms (S) Department,

Secretariat, Madras-600 009.

Dated: 24.2.1995.

From Thiru. M.B. Pranesh, I.A.S., Secretary to Government.

To All Secretaries to Government, Departments of Secretariat, Madras-9. All Heads of Departments including, District Collectors/District Judges and Chief Judicial Magistrates.

The Secretary, Tamil Nadu Public Service Commission, Madras-2.

The Registrar, High Court, Madras-104.

The Registrar, Tamil Nadu Administrative Tribunal, Madras-6.

Sir/Madam,

Sub: Public Services - Advancement to Selection Grade/Special Grade posts of persons against whom punishments have been imposed - Procedure to be followed - Instructions issued.

Ref: 1. Government letter No. 118117/86-1, Personnel and Administrative

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Reforms (Per. S) Department, dated 15.5.1987.

2. Government Letter No. 57502/90-1, Personnel and Administrative Reforms (Per. S) Department, dated 27.9.1990.

3. G.O. Ms. No. 368, Personnel and Administrative Reforms (Per. S) Department, dated 18.10.1993.

In modification of the instructions issued in the letters first and second cited, the Government direct that the instructions issued in paragraph 2 II(iv) to (vi) of G.O. Ms. No. 368, Personnel and Administrative Reforms (Per. S) Department, dated 18.10.1993 as amended from time to time shall be followed for the movement of persons to Selection Grade or Special Grade.

2. The cases of persons undergoing the punishment of stoppage of increment with or without cumulative effect or of reduction to lower stage in the time scale should also be considered for movement to Selection Grade or Special Grade based on the instructions issued in the reference third read above and if any one is considered fit for movement to Selection Grade or Special Grade, monetary value equivalent to the increments withheld for the unexpired period, or monetary value equivalent to the amount representing the difference between the normal stage and the reduced stage for the unexpired period, as the case may be, shall be recovered. However, in the case of persons undergoing the punishment of reduction to a lower rank in the seniority list, they can be considered for movement to Selection Grade or Special Grade only from the date on which the punishment has been completed or the immediate junior with reference to the lower rank moves to the Selection Grade or Special Grade, whichever is earlier.

Yours faithfully, (Sd.) for Secretary to Government.

19. Perusal of Government Order in G.O. Ms. No. 68, Personnel and Administrative Reforms Department, dated 23.1.1986 and the Clarificatory Orders issued from time to time by the Government makes it clear that the principle of Selection should invariably be followed for advancement of Selection Grade/ Special Grade, as the case may be. The executive instructions issued by the Government on the basis of the Tamil Nadu Fourth Pay Commission Recommendation categorically emphasize the criterion of "satisfactory service" for advancement to Selection Grade/Special Grade and in order to maintain the standard of efficiency in administration, the criterion which is adopted and followed for promotion should also be followed meticulously for granting selection grade/special grade, as the case may be, on completion of 10/20 years of service. The criteria which are normally fixed for promotion to a higher post, are seniority, good or satisfactory record of service, the nature of punishments imposed on the employee, lapses for which the punishments were imposed, pendency of charges or disciplinary proceedings or enquiry by the Director of Vigilance and Anti-Corruption, qualifications/tests prescribed under the Special/ Ad hoc Rules to higher post etc. It is also evident from the Government Order in

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G.O. Ms. No. 68, Personnel and Administrative Reforms Department, dated 23.1.1986 that if a government servant suffers a punishment between the period of approval of panel and advancement to Selection/Special Grade, the same may be taken due note of by the appointing authorities before actual issue of orders moving the Government servant to the Selection/Special Grades.

20. Reading of the executive instructions makes it explicit that they prescribe definite criteria for advancement to the Selection Grade/special Grade and it is intended to be awarded based on the assessment of the government servants, who satisfies the parameters set out in Clause 3(b) of the above Government Order dated 23.1.1986. In the light of the above factors/parameters and considering the emphasis on the criterion, "satisfactory service", which is insisted in the interest of maintaining standards of efficiency in administration, it could be inferred that there is a relative assessment and there is definitely an element of selection in the advancement to selection grade/special grade and therefore, advancement to such higher pay levelled in the same post is not automatic on the length of service. Thus, mere length of service in the post does not clothe the government servant any automatic right for advancement to the higher levels of pay, de hors the criteria "satisfactory service", and other considerations set out in G.O. Ms. No. 68, Personnel and Administrative Reforms Department, dated 23.1.1986 and G.O. Ms. No. 368, Personnel and Administrative Reforms Department, dated 12.10.1993.

21. Reading of the above said orders and clarifications issued from time to time makes it clear that in addition to maintaining "satisfactory service", the criteria fixed for promotion to a higher post, has to be satisfied and that the instructions issued in G.O. Ms. No. 368, Personnel and Administrative Reforms Department, dated 12.10.1993, as amended from time-to-time, have to followed for advancement to Selection Grade/Special Grade. However, there is an exception to the above said condition in Government instructions in Letter No. 5381/ S/94-7, P & AR, dated 24.2.1995, that in case of persons, undergoing the punishment of stoppage of increment with or without cumulative effect or of reduction to lower stage in the time scale, should also be considered for movement to Selection Grade or Special Grade, based on the instructions of the Government issued in G.O. Ms. No. 368, Personnel and Administrative Reforms Department, dated 12.10.1993 and if anyone is considered fit for movement to Selection Grade or Special Grade, monetary value equivalent to the increments withheld for the unexpired period, or monetary value equivalent to the amount representing the difference between the normal stage and the reduced stage for the unexpired period, as the case may be, shall be recovered.

22. As regards the applicability of the instructions in Letter No. 5381/S/94-7, P& AR, dated 24.2.1995 to the case of the petitioner, it is relevant to consider the nature of punishment imposed on the writ petitioner and they are given hereunder:

(i) Proceedings of the Director of Rural Development, Chennai, in Rc. No.

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63853/89/H2, dated 4.10.1990 - Stoppage of increment for three months without cumulative effect.

(ii) Proceedings of the Divisional Development Officer, Tiruvallur, in Rc. No. 12392/90/C1, dated 2.4.1991 - Stoppage of increment for six months without cumulative effect.

(iii) Proceedings of the Divisional Development Officer, Tiruvallur, in Rc. No. 3405/91/62- dated 16.11.1992 - Stoppage of increment for six months without cumulative effect.

(iv) Proceedings of the District Collector, Kancheepuram in Rc. No. 101966/A5, dated 4.4.1997 - Stoppage of increment for three months without cumulative effect.

23. However, the Government, in letter No. 20843/F,6/2002-1, dated 3.6.2002, rejecting the request of the petitioner, dated 19.10.2001, for advancement to Selection Grade, the respondents have referred to seven punishments. Even as per the representation of the petitioner, dated 25.7.2002, there is a reference to a punishment of stoppage of increment for a period of three months without cumulative effect, vide order, dated 4.4.1997 of the District Collector, Kancheepuram.

24. The petitioner has completed 10 years of service in the post of Block Development Officer on 19.8.1997. Punishments 1 to 3 have already been given effect to, by the respondents between 1990 and 1997. Government instructions in Letter No. 5381/S/94-7, P & AR, dated 24.2.1995, can be applied only, in the case of persons undergoing punishment and the monetary value, equivalent to the increments withheld for the unexpired period, can be recovered, so as to enable the government servant for advancement to Selection Grade/ Special Grade, as the case may be. Similarly, in a case, where a person has been inflicted with a penalty of stoppage of increment with or without cumulative effect or of reduction to lower stage in the time scale, his case can also be considered, if the monetary value equivalent to the amount representing the difference between the normal stage and the reduced stage for the unexpired period, as the case may be, can be recovered. Therefore, if the stoppage of increment with or without cumulative effect or reduction to a lower rank, in the time scale of pay. as the case may be. has already been given effect to, then the Government instructions contained in the letter dated 24.2.1995, cannot be applied, even though, a government servant completes 10 years of service, for advancement to Selection Grade/ Special Grade, as the case may be. In view of the above, the Government instructions, dated 24.2.1995, pressed into service by the petitioner would not lend any support to his case.

25. As regards the contention that the stoppage of increment without cumulative effect is a minor penalty and that therefore, any punishment awarded within 10 years'' period, has to be ignored for the purpose of advancement to Selection Grade/Special Grade, it is to be noted that Government Order in G.O. Ms. No. 68,

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Personnel and Administrative Reforms (Per. M), dated 23.1.1986. has been clarified in Government letter No. 118177/Per-S/86-4, dated 15.5.1987, to the effect that minor punishments, such as Censure, Fine, Recovery of Pay alone have been held, as not a bar for advancement to Selection Grade and not stoppage of increment, which has been specifically excluded.

26. The contention of the learned counsel for the petitioner that the case of the petitioner ought to have been considered for Selection Grade in the post of Block Development Officer, as the punishments awarded to him, have already expired, cannot be countenanced for the reason that the punishment of stoppage of increment for three months, without cumulative effect, vide proceedings of the District Collector. Kancheepuram in RC. No. 101966/A5, dated 4.4.1997, falls within the check period of five years and if G.O. Ms. No. 368, Personnel and Administrative Reforms Department, dated 12.10.1993 is read along with Letter No. 5381/S/94-7, P & AR, dated 24.2.1995, to the case of the petitioner, then it would be an impediment for advancement to Selection Grade/Special Grade. It is well settled that judicial review of an administrative action, is permissible only to find out, as to whether there is any material irregularity or illegality in the decision making process and not in the decision itself.

27. In the case on hand, I do not find that the respondents have deviated from the executive instructions, while considering the case of the petitioner for advancement to Selection Grade and therefore, the impugned order does not suffer from any illegality or material irregularity.

28. In the result, the writ petition is dismissed. No costs.

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