

(2006) 09 MAD CK 0167

In the Madras High Court

Case No : Writ Petition No. 856 of 2005 and W.P.M.P. No. 17103 of 2006

Syed Sherfudeen

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 11-09-2006

Acts Referred:

Tamil Nadu Forest Department Service Rules — Rule 5

Citation : (2006) 09 MAD CK 0167

Hon'ble Judges : M. Thanikachalam, J

Bench : Single Bench

Advocate : G.M. Syed Fasiuddin, for T. Datchina Moorthy, for the Appellant;
Titus Jesudoss, Spl. G.P. (Forests), for the Respondent

Judgement

M. Thanikachalam, J.—By the consent of both parties, the main writ petition itself is taken up for final disposal.

2. The writ petitioner, who was appointed in the Tamil Nadu Forest Department, as a Forester, is now working as Ranger. The Chief Conservator

of Forests, because of the alleged involvement of this petitioner, for some irregularities or otherwise, after initiating proceedings, has reduced him to

the minimum of time scale for a period of two years, without cumulative effect, which was modified in the appeal, as postponement of increment of

one year, without cumulative effect. Meanwhile, in the criminal case, where the petitioner was convicted, on appeal, the same was set aside and he

was acquitted.

3. However, his request for promotion was not considered, resulting applications before the Tamil Nadu Administrative Tribunal. The petitioner

was promoted as Ranger with effect from 1.11.1980. As per the orders of the Tribunal, the seniority has to be fixed from 1.11.1980. Stating the

above facts, when the petitioner requested the first respondent to consider his request for promotion, in exemption of relevant Rules regarding service qualification, his claim was negated, as if the petitioner is not possessing the pre-requisite qualification, as Ranger. The qualification prescribed originally, is relaxed. Therefore, the petitioner is entitled to be promoted, since, as such, there is no impediment or any disqualification, disentitling the petitioner to the higher post, as Assistant Conservator of Forests. On the above grounds, seeking a Writ of Mandamus, to issue a direction to the respondents, to promote the petitioner to the post of Deputy Conservator of Forest the writ petition has been filed.

4. Though the writ petition was filed in the year 2005, admitted on 17.1.2005, ordering Rule Nisi, the respondents have not filed any counter.

Considering the fact that the writ petitioner is likely to retire on 30.9.2007, as submitted, as stated above, by consent, the writ petition itself is taken up for final hearing.

5. The learned Counsel for the writ petitioner would submit that as on this date, the writ petitioner is fully qualified for promotion and the reason alleged for not giving promotion, as per the communication dated 17.6.2002, as if the petitioner is not having the prescribed qualification for promotion to the post of Assistant Conservator of Forests, is erroneous, because of the direction already given by the Administrative Tribunal, as well as the relaxation given by the Government. Elaborating the above submission, seeking aid from the documents, a strenuous submission was made for early promotion of the petitioner, since his juniors, who are also placed in the similar position and circumstances, were already promoted as Assistant Conservators of Forests.

6. The learned Special Government Pleader, responding to the above submissions, would submit that the petitioner, as such, is not qualified to be promoted, not only on the ground that he has not passed the Forest Revenue Test, which is one of the prescribed qualifications for promotion, but also on other grounds and this being the position, the direction sought for, may not be issued favouring the petitioner, who is not qualified to be promoted.

7. After hearing the arguments of either side and by going through the documents relied on by the learned Counsel for the petitioner, as well as

departmental communications etc., I am of the considered opinion that the submission of the learned Counsel for the petitioner, deserves

favourable consideration, warranting appropriate writ to render justice to a person, whose promotion was not considered, whereas his juniors

were already promoted.

8. It is an admitted fact that for the promotion in the Forest Department, one should pass the Forest Revenue Test, which is the prescribed

qualification also, as per Rule 5 of the Special Rules, framed under Tamil Nadu Forest Department Service Rules. On this ground alone, as seen

from the communication dated 17.6.2002, the request of the petitioner for promotion was not considered, which reads:

With reference to your representation cited, I am directed to inform that the crucial date for the preparation of panel of Assistant Conservator of

Forests for the year 1998-99 is 15.7.97. On that date, you have not passed the Forest Revenue Test, which is one of the prescribed qualifications

for promotion to the post of Assistant Conservator of Forests. Hence, your name could not be included in the above panel.

9. The learned Counsel for the petitioner would submit that the above said condition of passing the Forest Revenue Test was already relaxed by

the Government, as per the G.O.Ms.No.492, dated 24.12.1997. The said G.O., which is available at page No.1 of the typed set of papers, says

that the qualification prescribed for promotion from Forester to Ranger, as contemplated under Rules has been relaxed, thereby enabling not only

this petitioner, but also (1) Vetripandian, (2) N.Purushothaman and (3) M.L.Ramadas, for being considered for promotion. Once prescribed

qualification, for promotion is relaxed, the same would ensure in the subsequent promotion also, as seen from G.O.Ms.No.224 Personnel and

Administrative Reforms (RER.S) Department, dated 10.5.1990, which was issued based on the judgments of this Court in W.A.No.106 of 1979

and W.A.No.211 of 1986. The said G.O., reads:

The Government, therefore, direct that the principle laid down in the above judgments be followed and it should be considered that once the

relaxation is given, exempting a person from possessing qualifications/ passing Departmental/Special Test and other obligatory tests prescribed for

the post, it should be held valid for all future promotions, where the same

qualification is prescribed.

This being the position, it is not known, how the petitioner was denied the promotion only on the ground that he has not passed the Forest Revenue

Test, since that condition of passing the Forest Revenue Test, though one of the prescribed qualifications, has already been relaxed.

10. In view of the above two G.Os., I am of the considered opinion, the promotion, claimed by the petitioner, cannot be denied only on the ground

that he has not passed the Forest Revenue Test, as if that prescribed qualification, for promotion, is even now available to the petitioner, forgetting

the fact that the said condition has already been relaxed.

11. The petitioner approached the Tamil Nadu Administrative Tribunal in O.A.No.1457 of 1989 as well as O.A.No.666/1990, questioning the

orders of the Conservator of Forests, which was confirmed by Principal Chief Conservator of Forests, as per the order dated 10.3.1989. In those

O.As. itself, the fact that this petitioner was not deputed, for training, was considered, as seen from last paragraph of the order. The Vice

Chairman of the Tamil Nadu Administrative Tribunal, considering the conduct of the higher authorities, observed that "if the petitioner had not been

deputed for training, consequent to the proceedings initiated, he should have been deputed immediately and promoted thereafter, that too,

considering the fact that the proceedings initiated having concluded, without any penalty. In this view, an order came to be passed on 17.11.2003,

in the following manner:

According to the applicant, he had been selected in 1978 for training as Ranger, but was not deputed consequent on the proceedings initiated. If

so, he should be so deputed immediately in the next batch, and should be promoted thereafter. Because these proceedings having concluded

without any penalty, can have no relevance in deciding his eligibility and consideration of his claim, of deferred pending proceedings, should be

considered as on the date due with reference to this seniority on conclusion of the proceedings he will be entitled to seniority and pay fixation as if

promoted when his immediate junior was promoted. His pay should be fixed on that basis, subject to drawal of the pay of the post. From the date

on which he acts in the higher post. He has been unjustly denied promotion and the consequential benefits by repetitive proceedings on the same

facts on which he had been acquitted by High Court. We would, therefore, expect the Government to take further action in the matter to give him the benefits denied without undue delay.

Despite the said order of the Tribunal, the petitioner has not been promoted to the next post, thereby causing grievance, legitimately also, to the petitioner, that should be redressed, issuing or giving appropriate direction.

12. As per the communication dated 17.6.2002, the crucial date for the preparation of panel for the post of Assistant Conservator of Forests for the year 1998-1999 is 15.7.1997. Therefore, we have to see, on that date, whether the qualification prescribed for promotion has been relaxed or deemed to have been relaxed, considering the conduct of the respondents, in promoting the juniors of the petitioner. As submitted before this Court, at present, the petitioner has also passed the Forest Revenue Test and therefore, there cannot be any impediment on that ground. For the petitioner and three others, relaxation was given from the Special Training as per the G.O.Ms.No.492, dated 24.12.1997. Some of the persons for whom relaxation was granted on 24.12.1997, were promoted in the month of December, 2001, as Assistant Conservators of Forests, as seen from the Establishment List of State, Forest Service, Tamil Nadu Cadre and General Service. When three other persons were considered, not only on the basis of the exemption given but also, probably, on the basis of the subsequent qualification, there is nothing wrong in considering the claim of the petitioner, for the promotion as Assistant Conservator of Forests, if he is otherwise qualified.

13. The learned Special Government Pleader (Forests) also would submit that a suitable direction may be issued to the authorities concerned, to consider the promotion of the petitioner, if he is otherwise qualified, thereby meaning subsequent to 17.6.2002, if there is no disciplinary proceeding or any other disqualification, in giving promotion to the petitioner, which appears to be reasonable also.

14. In the light of the above discussion, considering the status of the petitioner and the fact that he is likely to retire on 30.9.2007, as submitted, the writ petition is disposed of, with the following direction:

The respondents are directed to consider the request of the petitioner, for promotion, to the post of Assistant Conservator of Forests, as per the

orders of the Tamil Nadu Administrative Tribunal in O.A.No.1457 of 1989, dated 17.11.2003, as well not denying the promotion on the ground

that he has not passed the Forest Revenue Test, which is one of the prescribed qualifications for promotion, which has already been relaxed, if he

is otherwise qualified for promotion. This exercise shall be completed, according to law, on merits, as per the other Rules and Regulations also,

within a period of three months from the date of receipt of a copy of this order.

No costs.

Consequently, W.P.M.P.No.17103 of 2006 is closed.