

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2009

CORAM

THE HON'BLE Mr. JUSTICE K.VENKATARAMAN

W.P. Nos.8886 and 14366 of 2008
and
M.P.No.1 of 2009

M.Thillai Natarajan

... Petitioner in
both the W.Ps

vs.

1.State of Tamil Nadu rep. By
Secretary to Government,
Home Department,
Fort St. George,
Chennai - 9.

2.The Director General of Police,
Mylapore, Chennai - 4.

... Respondents in
both the W.Ps

W.P.No.8886 of 2008: Writ petition filed under Article 226 of The Constitution of India to issue a Writ of certiorari/mandamus to call for the records relating to the order of the first respondent herein in G.O.Ms.No.1396 Home (Pol.1A) Department dated 03.10.2007 and quash the same and consequently direct the respondents herein to promote the petitioner to the post of Deputy Superintendent of Police.

W.P.No.14366 of 2008: Writ petition filed under Article 226 of The Constitution of India to issue a Writ of certiorari/mandamus to call for the records relating to the order of the first respondent herein in G.O.Ms.No.658 Home (Police 2) Department dated 10.06.2008 and quash the same insofar as it fails to include the petitioner's name in the panel of Inspectors of Police fit for appointment by recruitment by transfer for the post of Deputy Superintendent of Police for the year 2007-2008 and consequently direct the respondents herein to include the name of the petitioner in the said list after Serial No.36 and above Serial No.37 with all consequential benefits.

For petitioner

: Mr.N.Vijaynarayanan, Sr. Counsel
for Mr.R.Parthiban

For respondents

: Mr.P.S.Raman, Advocate General
assisted by Ms.Lita Srinivasan,
Govt. Advocate

COMMON ORDER

The writ petition in W.P.No.8886 of 2008 was filed challenging the Government Order in G.O.Ms.No.1396 Home (Pol.1A) Department dated 03.10.2007 and consequently directing the respondents to promote him to the post of Deputy Superintendent of Police.

2.The writ petition in W.P.No.14366 of 2008 was filed for quashing of the order of the first respondent made in G.O.Ms.No.658 Home (Police 2) Department dated 10.06.2008 sofar as it fails to include the name of the petitioner in the panel of Inspector of Police fit for appointment by recruitment by transfer for the post of Deputy Superintendent of Police for the year 2007-2008 and consequently directing the respondents to include the name of the petitioner in the said list with all consequential benefits.

3.The short facts leading to the filing of the writ petition as put forth by the petitioner in W.P.No.8886 of 2008 is set out hereunder:

3.1.The petitioner belongs to the 1987 batch of directly recruited Sub Inspector of Police. While he was working as Sub Inspector of Police in Ambattur Police Station, he was nominated in a team which was entrusted with the task of securing the dreaded, armed gangsters Asaithambi, Mano & Manoharan and Gopal. The team worked hard for months together and finally liquidated the three armed gangsters in a fierce encounter that took place in front of the Loyola College on 31.07.1996. The petitioner played a vital role in the said encounter.

3.2.The Tamil Nadu Administrative Tribunal in a proceeding laid by the third party in O.A.No.1052 of 1994, directed the respondents to frame guidelines for accelerated promotions and pursuant to the same, the Government of Tamil Nadu issued G.O.Ms.No.468 Home (Police V) Department dated 19.03.1996, wherein the guidelines have been set out for granting accelerated promotions.

3.3.By following the guidelines and the rules relating to the Tamil Nadu State and Subordinate Service Rules especially Rule 36 (B) (ii) (2), by G.O.Ms.No.575 Home (Police III) Department dated 22.04.1997, accelerated promotion was given to him from the post of Sub Inspector of Police to the post of Inspector of Police by relaxing the relevant rules in his favour. Thereafter, by proceeding dated 20.01.1999 of the Additional Director General of Police, he was included in the 'C' list of Sub Inspector of Police fit for promotion as Inspector of Police for the year 1996-1997 assigning him Serial No.72(b). Thereafter, by proceeding dated 22.09.1999, the Superintendent of Police modified the seniority list by giving him due seniority.

3.4. By then, the Government granted accelerated promotion to those who were engaged in killing notorious forest brigand Veerappan and his gang by passing an order in G.O.Ms.No.1252 Home (Pol.VIII) Department dated 29.10.2004. Thereafter, the Government in G.O.Ms.No.1396 Home (Pol.1A) Department dated 03.10.2007, amended para "e" of the earlier order with new para "e". Though the said amendment to the Government Order was in relation to the officers who were involved in the Veerppan case, the said Government Order referred as follows:

"The concept indicated in para 3(i) above is also applicable to the persons, who have been awarded accelerated promotion in individual orders from time to time to the extent it applies to future promotion. The above principle will apply also to cases of accelerated promotion to be considered in future."

3.5. The said Government Order came as a shock to the petitioner since the petitioner was due for promotion to the post of Deputy Superintendent of Police. He, therefore, made a representation to the second respondent on 19.02.1998 but however the same was not considered. The petitioner, being aggrieved over the said Government Order, has come up with the said writ petition.

4. In W.P.No.14366 of 2008, apart from narrating the facts set out in W.P.No.8886 of 2008, it is stated further that in view of the interim stay of G.O.Ms.No.1396 Home (Pol.1A) Department dated 03.10.2007 granted in the said writ petition, when the temporary panel for promotion to the post of Deputy Superintendent of Police for the year 2007-2008 has been prepared, the petitioner's name was omitted. Hence the petitioner has come up with the said writ petition quashing the order of the first respondent in G.O.Ms.No.658 Home (Police 2) Department dated 10.06.2008 sofar as it fails to include his name in the panel of Inspector of Police fit for promotion to the post of Deputy Superintendent of Police for the year 2007-2008 and consequently directing the respondents to include his name.

5. A counter affidavit was filed on behalf of the respondents in W.P.No.8886 of 2008 along with an application in M.P.No.4 of 2008 for vacating the interim stay that was granted in the said writ petition. The said counter affidavit sets out the following facts:

5.1. In recognition of killing of notorious forest brigand Veerappan and his gang, the Government passed various Government Orders granting accelerated promotion to some police personnel and also granted cash awards besides house sites to them. Supernumerary posts were created for granting accelerated promotion. In the meanwhile, several police officers who were not able to get accelerated promotion, made representation to the Government which

led the Government to pass G.O.Ms.No.1396 Home (Pol.1A) Department dated 03.10.2007 amending clause "e" of the original Government Order in G.O.Ms.No.1252 Home (Pol.VIII) Department dated 29.10.2004 and G.O.Ms.No.1346 Home Department dated 06.12.2004. The said Government Order strictly adhered to Rule 35 of the General Rules of the Tamil Nadu State and Subordinate Service Rules and also in tune with the verdicts of the Honourable Apex Court in the Service Laws.

5.2. The seniors of the petitioner having no penalty, should not be denied next promotion in accordance with their panel position (original seniority). The accelerated promotion as Inspector of Police was given to the petitioner for participating in the encounter relating to one Asaithambi and others and it is only one stage of promotion and does not enable him for accelerated seniority to get further promotion as Deputy Superintendent of Police, by-passing several seniors. Besides, there is no Rule for giving consequent seniority to accelerated promotees like that of the petitioner. Thus the counter affidavit seek for the dismissal of the writ petitions.

6.I have heard Mr.Vijaynarayanan, learned senior counsel appearing for the petitioner and the learned Advocate General assisted by Ms.Lita Srinivasan, learned Government Advocate.

7.The petitioner was promoted as Inspector of Police by granting him accelerated promotion by virtue of the Order of the Government in G.O.Ms.No.575 Home (Police.III) Department dated 22.04.1997. The said Government Order clearly reads that the petitioner was given promotion on regular basis by relaxing relevant rules. Further, it mentions that the rules framed as per G.O.Ms.No.468 Home (Police V) Department dated 19.03.1996 has been duly complied with. It would be useful to extract a portion of the Government Order in G.O.Ms.No.575 Home (Police III) Department dated 22.04.1997, which is relevant for the purpose of this case:

"2.The Board for Accelerated Promotion at the meeting held on 26.02.1997 considered the proposal of the Director General of Police and has recommended that the following 8 (eight) police personnel may be given accelerated promotion by relaxing the relevant rules:

Name	Present Rank	Rank to which accelerated promotion is to be given
1.....		
2.Thillai Natarajan	Sub Inspector of Police	As Inspector of Police
3.....		

3. The Government accept the above recommendation of the Board for accelerated promotion and direct that the following 8 (eight) Police personnel be given accelerated promotion as indicated against each:

Sl.No.	Name (Thiruvalargal)	Present Rank	Rank to which accelerated promotion is ordered
1.....			
2.	Thillai Natarajan	Sub Inspector Police	Inspector of Police
3.....			

4. In exercise of the powers conferred under rule 39 of the Special Rules for Tamil Nadu Police Subordinate Services, the Governor of Tamil Nadu hereby relaxes the relevant rules in favour of the following Police Personnel as indicated in detail against each of them so as to enable them to be regularly appointed to the posts noted against each:

Sl. No.	Name and present Rank (Thiruvalargal)	Rank to which accelerated promotion is given	Rule/Rules relaxed for giving accelerated promotion
1.....			
2.	Thillai Natarajan, Inspector of Police Sub Inspector of Police, Ambatur.		Rule 3(b) (i) of Tamil Nadu Police Subordinate Service Rules
3.....			

8. The said Government Order thus accorded accelerated promotion to the petitioner for the courage and heroism displayed by him along with others in an encounter of the notorious dangerous criminal one Asaithambi and his gang on 31.07.1996 in front of the Loyola College at Chennai. From the said Government Order, it could be seen that the proposal of the Director General of Police recommending the name of the petitioner along with others and recommendation made by the Board for accelerated promotion was considered while granting accelerated promotion to the petitioner that too in the exercise of powers conferred under Rule 36 of the Special Rules for Tamil Nadu Police Subordinate Service and that he has been regularly appointed to the said post.

9. Later by the proceeding of the Additional Director General of Police (Law and Order), Chennai dated 20.01.1999, he was included in the 'C' list of Sub Inspectors of Police fit for promotion as Inspectors of Police for the year 1996-1997 assigning him Sl.No.72 (b). The said proceeding is extracted hereunder:

"Proceedings of the Addl. Director General of Police (L&O),
Chennai - 4.

Present: Thiru.S.Kumarasamy, I.P.S..
Pro.No.254359/NGB I (2)/97 Dated 20.01.1999

Short Title: Tamil Nadu Police Subordinate Service Rules - Accelerated promotion on regular basis in relaxation of rules for the courageous action of certain Police Personnel in an encounter with notorious dacoits - promotion of Tvl.L.Perumal and Thillai Natarajan, Sub Inspectors of Police as Inspectors of Police - fixation of their seniority in the rank of Inspectors of Police - Orders - Issued.

Read: 1.G.O.Ms.No.575 Home (Pol.III) Dept., dated
22.04.1997.

2. Chief Office Memo No. 94670/NGB I (4)/97 dated 02.05.1997.

3. Order No.177/7694/97 dated 02.05.1997 of the Deputy Inspr. Genl. Of Police, Chengai Range.

4. Letter No.A1/7694/97 dated 10.05.1997 of the Dy. Inspr. Gel. Of Police, Chengai Range.

5. Chief Office Memo C.No.77500/NGB I (4)/97
dated 19.04.1997.

ORDER:

In the Government Orders read above, the Government have issued orders relating the rule 3(b)(i) of the Tamil Nadu Police Subordinate Service Rules, among others, for accelerated promotion of the following Sub Inspectors of Chengal (East) District as Inspectors of Police in appreciation of the courage and heroism displayed by them in an encounter with the notorious and dangerous criminal Thiru Asaithambi and his gang on 31.07.1996 in front of Loyola College, Chennai.

- 1.Tr.L.Perumal, Sub Inspector of Police
2.Thiru.Thillai Natarajan, Sub Inspector of Police.

Both the above two Sub Inspectors are direct recruit S.I.s of 1987 in Sl.Nos.368 and 417 respectively in the order of merit among the 1987 batch direct S.Is.

2.In deference to the Government Orders, promotion as Inspectors was ordered to them by the Deputy Inspector General of Police, Chengai Range in his orders third read above. At the time of their promotion, the 'C' list of Sub Inspectors fit for promotion as Inspector for 1996-97 was current. As per Chief Office orders fifth read above necessary orders to promote Sl.Nos.1 to 72 from the 'C' list of 1996-97 were issued. The next order of Chief Office allotting Sl.No.73 to 103 from the 'C' list were issued on 10.05.1997.

3.Hence, it is hereby ordered that Tvl.L.Perumal and Thillai Natarajan be included in the 'C' list of Sub Inspectors fit for promotion as Inspectors of Police drawn for the year 1996-97 assigning them Sl.Nos.72-a and 72-b respectively. Tvl.A.Venkatachalam and S.Krishnamurthy who were included in the 'C' list with Sl.Nos.72-a and 72-b are now reassigned with Sl.Nos.72-c and 72-d respectively. The State seniority of the Inspectors of Police shall be modified accordingly.

Sd/-S.Kumarasamy,
Addl. Director General of Police
(Law & Order)"

10.Thereafter, the Superintendent of Police in his proceeding dated 22.02.1999 modified the seniority list by giving him due seniority.

11.In the meanwhile, the Government granted accelerated promotion to Special Task Force men who were engaged in the encounter and killing of notorious forest brigand Veerappan and his gang by passing Government Order in G.O.Ms.No.1252 Home (Pol.VIII) Department dated 29.10.2004. Certain objections were raised by the police officials who could not get accelerated promotion and they seem to have made a representation to the Government and the Government passed another order in G.O.Ms.No.1396 Home (Pol.1A) Department dated 03.10.2007 amending para "e" of G.O.Ms.No.1252 Home (Police VIII) Department dated 29.10.2004. By the said Government Order dated 03.10.2007, it was laid that accelerated promotion will not give a consequential seniority, since the accelerated promotion is only for one stage. Though the said amendment through G.O.Ms.No.1396 dated 03.10.1997 was in relation to the STF men who involved in the Veerappan case, the said Government Order further states as follows:

"The seniority between the accelerated promotees and the general promotees in the promoted category shall continue to be governed by their panel position i.e. with reference to their inter-se-seniority in the lower grade at any stage the accelerated promotion will not give the individual accelerated consequential seniority, since the accelerated promotion is only for one stage."

In view of the same, the petitioner was denied further promotion.

12. In a batch of writ petitions filed by the police officials who have got accelerated promotion, challenging the G.O.Ms.No.1346 Home (Pol.1A) Department dated 03.10.2007, I have held that the Government Order is valid and the persons who have got accelerated promotion by virtue of G.O.Ms.No.1252 Home (Police VIII) Department dated 29.10.2004 are not entitled to accelerated seniority and that accelerated promotion was accorded only for one stage. However, the case of the petitioner stands entirely different from those cases.

13. The petitioner herein was accorded accelerated promotion from the post of Sub Inspector of Police to the post of Inspector of Police by virtue of G.O.Ms.No.575 Home (Police.III) Department dated 22.04.1997 extracted above. It is fairly admitted that he was accorded promotion by following the guidelines laid in G.O.Ms.No.468 Home (Police V) Department dated 19.03.1996. In fact, the letter of the Government, addressed to the Director General of Police dated 27.01.1997 clearly requires the Director General of Police to send a proposal for accelerated promotion giving several details enumerated thereunder. The said proceeding dated 27.01.1997 of the Government can be usefully extracted hereunder:

"Copy of the Government Letter No.133841/Pol. III/96-1 Home (Police III) Department dated 27.01.1997 of Joint Secretary to Government, Home (Police III) Department, Chennai - 9 addressed to the Director General of Police, Chennai - 2.

Sub: Police Department - Out of turn promotion to police personnel who exhibited courage and heroic feat while in action - Regarding.

Ref: 1) Your Office Lr.Rc.No.45443/NGB.III(3)/95
dt. 28.02.95

2) Govt.Lr.No.99795/Po.III/96 dated 23.9.96

3) Govt.Lr.No.25656/Pol.III/95-3 dated
15.10.96

4) Your office Lr.C.No.187687/NGB.III(3)/96
dt. 4.12.96

5) Your office Lr.C.No.45443/NGB.III(3)/95
dt.5.12.96

I am directed to state that as per the orders issued in G.O.Ms.No.468 Home dated 19.03.1996 the Board of accelerated promotion will consider the cases for accelerated promotion for both professional achievements and for achievements in sports. For achievements in sports, the Board shall consider the cases on an annual basis and for professional achievements the cases shall be considered as and when occasion arises. As such, the cases for accelerated promotion for professional achievements have to be placed before the Board with full details for its consideration and decision.

2. In this connection, I am to point out that as accelerated promotion cannot be treated as a routine affair, the proposals have to be placed before the Board with full details and justification. The proposals received by the Government contain only the names of the Police Officers who were recommended for accelerated promotion and promotion from which rank to which higher rank. As such, I am to request you to send the proposals for accelerated promotion in a Proforma (standard format) containing the following details along with relevant records for examinations of the Government.

- i) Details regarding the incident/encounter/adventure/event
- ii) The No. of Police personnel involved in the concerned police team.
- iii) The role played by each individual duly indicating the performance of High order and exceptional personal ability in achieving operational success at great risk to personal life done by the individual during the adventure/event.
- iv) Whether all the police personnel in the team should be given accelerated promotion. It should be based on one's role in the action and the nature of the risk taken by the individual. Being a mere member in the team will not give any right to the officer for accelerated promotion.
- v) Whether other incentives such as each reward or advance increments/advancing seniority will be sufficient.
- vi) The service record of the individual and defaulter sheet (as per the said instructions the police personnel must have blemish free professional record)
- vii) The relevant rules need to be relaxed in favour of the individual

viii) Service particulars of the individual
ix) Justification for accelerated promotion
x) The no. of seniors to be overlooked if accelerated promotion is to be given to the individual.

Sd/- 03.02.1998

SUPERINTENDENT"

14. When the petitioner was accorded accelerated promotion by following the said Government Order in G.O.Ms.No.468 Home (Police V) Department dated 19.03.1996 and also on the basis of the particulars referred in the proceeding of the Government dated 27.01.1997, it cannot be now heard to say, by the respondent Government that accelerated promotion was given only for one stage and that the petitioner is not entitled for further promotion.

15. In the given case on hand, the petitioner was promoted to the post of Inspector of Police from the post of Sub Inspector of Police by virtue of powers conferred under Rule 39 of the Special Rules for Tamil Nadu Police Subordinate Service. Further, relevant rules have been relaxed in favour of the petitioner. It is not also that the petitioner was appointed to the supernumerary post created as in the case of promotion accorded to the STF men who were engaged in killing the forest brigand Veerappan. The petitioner was appointed to the substantive post.

16. During March or April 2008, the seniority list was prepared by the second respondent and the petitioner's name for the post of Deputy Superintendent of Police seems to have been included and as on date, the petitioner's seniority is maintained as 72b. However, the Government seems to have withheld his name by virtue of G.O.Ms.No.1396 Home (Pol.1A) Department dated 03.10.2007.

17. The petitioner's accelerated promotion was due to his individual gallantry act and based on his merit and ability. In view of the above stated position, there is no rhyme or reason to reject/refuse the further promotion to him.

18. Yet another aspect that has to be seen in the case of the petitioner is that in the case of STF men, who have been accorded accelerated promotion by virtue of G.O.Ms.No.1252 Home (Pol.VIII) Department dated 29.10.2004 where it is stated that such accelerated promotion is only for one stage. However, while according accelerated promotion to the petitioner, the said Government Order does not contemplate or does not state that it is one stage of promotion.

19. The discussion made above will amply establish that G.O.Ms.No.1396 Home (Pol.1A) Department dated 03.10.2007 amending 5e of the original Government Order in G.O.Ms.No.1252 Home (Pol.VIII) Department dated 29.10.2004 may not have any relevance to the case of the petitioner. Hence ignoring the said Government Order as far as

the petitioner is concerned, the respondents are bound to promote the petitioner to the post of Deputy Superintendent of Police. Further the non-inclusion of the petitioner in the panel of Inspector of Police fit for appointment to the post of Deputy Superintendent of Police as per the order of the first respondent in G.O.Ms.No.658 Home (Police 2) Department dated 10.06.2008 is liable to be quashed sofar as non-inclusion of the petitioner alone is concerned and consequently, I direct the respondents to consider the case of the petitioner for inclusion of his name in the said list after Sl.No.36 and above Sl.No.37 with all consequential benefits. The said exercise has to be carried out by the respondents within a period of six weeks from the date of receipt of a copy of this order.

20. In fine, the writ petitions stand allowed. But however, there shall be no order as to costs. Consequently, connected M.P. is closed.

mmi

To

1. The Secretary to Government,
Home Department,
Fort St. George, Chennai - 9.

2. The Director General of Police,
Mylapore, Chennai - 4.

2 ccs To Mr.R.Parthiban, Advocate, SR.57915 & 57196

NG (CO)
sra 19.11.2009

W.P.Nos.8886 and 14366 of 2008

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