

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.10.2009

CORAM

THE HONOURABLE MR. JUSTICE K.VENKATARAMAN

W.P. No.17312 of 2008

&

M.P.Nos.2, 3 & 4 of 2008

K.Mohan

...Petitioner.

-vs.-

1.State of Tamil Nadu,
Rep. By Secretary to Government,
Home Department,
Fort St. George,
Chennai - 600 009.

2.The Director General of Police,
Tamil Nadu Police,
Chennai - 600 004.

...Respondents.

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus, to call for the entire records in connection with the order of the 1st respondent in G.O.Ms.No.1396 Home [Pol-1A] Dept dated 3.10.2007 in so far as it substitutes para 5(e) of G.O.Ms.No.1252 Home [Pol-VIII] Dept dated 29.10.2004 and quash the same and consequently direct the respondents to include the name of the petitioner in the panel of Superintendent of Police fit for promotion for the year 2004-2005.

For petitioner : Mr. Venkatachalapathy, Senior Counsel
for Mr. M.Sriram

For Respondents : Mr. P.S.Raman, Advocate General,
Asst. by Mrs.Pushpa menon

O R D E R

The petitioner has come up with the present writ petition challenging the order of the first respondent made in G.O.Ms.No.1396 Home [Pol-1A] Dept dated 3.10.2007 in so far as it substitutes para 5 (e) of G.O.Ms.No.1252 Home [Pol-VIII] Dept dated 29.10.2004 and consequently to direct the respondents to include his name in the panel of Superintendent of Police fit for promotion for the year 2004-2005.

2. The short matrix of the matter is set out here under:-

2.1. The petitioner is a graduate and directly recruited to

the post of Sub-Inspector of Police in the year 1979 and joined duty on 02.11.1979. He was promoted as Inspector of Police in the year 1994. He is holding the rank of Additional Superintendent of Police with effect from 14.10.2005.

2.2. While he was working as Inspector of Police at Sholvaram Police Station, he was a part of the special team formed to nab dreaded armed gangsters Asaithambi, Mano and others. When they were spotted at Loyola College, where they were waiting to collect the ransom for kidnapping, the gangsters smelt the presence of police and wanted to escape. However, the driver was instructed to ram the car in which the said armed gangsters were sitting, to block their escape without fearing his life and in the impact he got fractured. In the exchange of fire between the special team and the gangsters, the three gangsters were eliminated on the spot. He was hospitalised for his injury and took treatment.

2.3. Considering his bravery along with others and meritorious act, he was awarded Chief Minister's Medal. One Mr.C.Elango, the other member of the Special Team represented to the Government of Tamil Nadu for accelerated promotion for his bravery in the said encounter. The Government rejected the request of the said C.Elango. Aggrieved over the same, he filed Original Application before the Tamil Nadu Administrative Tribunal in O.A.No.4809 of 1999. The Tribunal in its order dated 10.04.2002 directed the Government, to give him promotion from 22.04.1997 with service and monetary benefits. Against the said order of the Tribunal, the Government preferred an appeal before the High Court of Madras, and this Court by its order dated 6.12.2005 made in W.P.No.3710 of 2003, directed the Government to pass orders in one way or other. At the first instance, the Government did not consider his request, but however on his review petition, considering the promotion granted to one Mr.Thirumalaisamy, he was given accelerated promotion from Inspector to Deputy Superintendent of Police.

2.4. The request of Mr.C.Elango was forwarded by the Director General of Police to the Government and the Government had placed the same before the Accelerated Promotion Board for its decision. The Board decided to constitute High Level Committee to examine each and every police officer in the encounter for Accelerated Promotion. The High Level Committee recommended that the said C.Elango and the petitioner whose contributions to the gallant encounter of 31.07.1996 were of higher order deserved recognition. The recommendation of the High Level Committee was accepted by the Accelerated Promotion Board. Again, the Accelerated Promotion Board convened another meeting for deciding the date of promotion to be awarded and accordingly awarded promotion to the said C.Elango with effect from 6.12.2004 and for the petitioner with effect from 14.10.2005. He was promoted as Addl. Superintendent of Police with effect from 14.10.2005 retrospectively against the supernumerary post

created vide G.O.Ms.No.1246 dated 20.08.2007.

2.5. There was also a direction to fix the inter-se-seniority and to forward the same to the Government for its approval. On granting of accelerated promotion he had sent a representation to the Director General of Police on 29.09.2007 for inclusion of his name in the panel for the post of Superintendent of Police in the year 2004-2005. Again, he had sent a representation to the Government on 16.05.2008, but till date he has not received any reply. In the mean while, the Government had issued G.O vide G.O.Ms.No.1396 dated 3.10.2007 amending para 5(e) of G.O.Ms.No.1252 dated 29.10.2004, in the case of the accelerated promotion granted to STF men who was involved in the Veerappan case. The said G.O may not have any bearing for the petitioner to get further promotion. The petitioner, thus has approached this Court, challenging the G.O 1396 dated 3.10.2007 with a further direction to the respondents to include his name in the panel of Superintendent of Police, fit for promotion for the year 2004 - 2005.

3. I have heard Mr. M.Venkatachalapathy, the learned Senior Counsel appearing for the petitioner and Mr. P.S.Raman, the learned Advocate General appearing for the respondents. The facts which are not disputed are :-

(1) On 2.11.1979, the petitioner joined duty as Sub-Inspector of Police on his selection to the said post.

(2) In the year 1994, he was promoted as Inspector of Police.

(3) 31.07.1996 - Gangsters Asaithambi, Mano and Gopal were shot dead near Loyola College - The petitioner was a part of the special team formed to nab them and suffered injury.

(4) 1997 - The petitioner was granted chief Minister's medal for Gallantry.

(5) One C.Elango filed Original Application before the Tamil Nadu Administrative Tribunal in O.A.No.4809 of 1999.

(6) On 10.4.2002, the Tamil Nadu Administrative Tribunal, Chennai, directed the Government to grant him promotion from 22.4.1997 with all attended service benefits, seniority etc.,

(7) On 6.12.2005, the writ petition filed by the Government in W.P.No.3710 of 2003 against the order of the Tamil Nadu Administrative Tribunal, referred to above held that the said C.Elango made out a case for consideration for accelerated promotion and further directed the Government to pass orders.

(8) The Government however rejected his claim

(9) On 15.7.2005, promotions were granted to one Kaliamurthy and one Thirumalaisamy.

(10) Thereafter, citing the said order, the said Mr. C.Elango, filed a review application before the Government.

(11) On 20.8.2007, in G.O.Ms.No.1246, the Government reconsidered the case of the said C.Elango and the petitioner for

grant of accelerated promotion retrospectively and granted relief.

(12) 22.8.2007 - D.G.P office sent a proposal to the Government to fix their seniority in A.D.S.P.

(13) In G.O.Ms.No.1252 dated 29.10.2004, the Government granted accelerated promotion for the STF men who have killed Veerappan.

(14) G.O.Ms.No.1396 dated 03.10.2007 was passed by the Government, amending not only para 5e of G.O.Ms.No.1252 dated 29.10.2004 (Promotion given to STF men who have engaged themselves in killing the forest brigand Veerappan) but also stated,

"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."

4.1. The question that arises for consideration is whether by virtue of G.O.Ms.No.1396 Home [Pol-1A] Dept dated 3.10.2007, the petitioner could be denied further promotion as Superintendent of Police. Unlike, in the case of STF men who have involved in the Veerappan's case, who have been accorded promotion, in the case of the petitioner individual assessment was made about his outstanding performances and exceptional personal activity in achieving operational success in dreaded armed gangsters Asaithambi and others at great risk to his personal life. The G.O granting accelerated promotion to the petitioner and one Elango is extracted here under:-

Home (Police.1A) Department

G.O.Ms.No.1246

Dated:20.8.2007

Read:

1. G.O.Ms.No.468/Home (Police.V) Department, dated 19.3.1996

2. From the Director General of Police letter No.108576/NGB VII(2)/2006, dated 18.7.2006 and 29.5.2007.

ORDER:-

Thiru C.Ilango, while he was working as Inspector of Police submitted a petition to Government requesting accelerated promotion for his bravery in an encounter, which had occurred near Loyola College leading to the death of the kidnappers (Asaithambi and Mano) on 31.7.96. For the above bravery he had been recommended for Chief Minsiter's Medal and the same was awarded to him. Hence accelerated promotion by one stage was rejected. Aggrieved by the

rejection of his claim for accelerated promotion Thiru. C.Ilango filed O.A.No.4809/99 before the Tamil Nadu Administrative Tribunal. The Tribunal in its order dated 10.4.2002 in O.A.No.4809/99 directed to give promotion from 22.4.97 with service and monetary benefits. Against the above Tamil Nadu Administrative Tribunal orders Government filed appeal before the High Court, Madras in WPMP No.4680/03 in WP No.3710 of 2003. The Hon'ble High Court in their order dated 6.12.2005 in W.P.No.3710/2003 among other things ordered that it is made clear that in view of all the details placed before us, the first respondent has made out a prima facie case for the consideration for accelerated promotion from 22.4.1997 and it is for the Government to pass appropriate orders one way or the other. The first petitioner/Home Department is directed to pass orders afresh within a period of three months from the date of receipt of copy of this order."

2. As directed by the Hon'ble High Court accelerated promotion board meeting was convened and the board did not find any reason to interfere with this pattern of recognition and reward since no substantial material is available to deviate from the earlier decision and to sanction accelerated promotion in the case of Thiru. C.Ilango and decided that Thiru. C.Ilango, who had already been awarded Chief Minister's Police Medal for Gallantry, cannot be considered for sanction of accelerated promotion. Accordingly Thiru C.Ilango, Assistant Commissioner of Police has been informed vide letter (Ms) No.193, Home dated 09.03.2006. Thiru C.Ilango, Assistant Commissioner of Police has submitted a review petition to Government wherein he has requested to give accelerated promotion on par with his co-participant Thiru Thirumalaisamy who was given accelerated promotion from Inspector to Deputy Superintendent of Police with effect from 12/2004. The Director General of Police forwarded his request and requested to reconsider the review petition of Thiru C.Ilango, Assistant Commissioner of Police and pass appropriate orders. Accordingly the case was re-examined and decided to place the proposal before the Accelerated Promotion Board for its decision. At the meeting, it was decided that a High Level Committee headed by a Senior Officer in the Office of the Director General of Police should be set up by the Director General of Police which will examine the role of each and every Police Officer involved in the encounter against Asaithambi and his gang and give a comprehensive report to Government within a month. After receiving the report, the Accelerated Promotion Board would be convened and the report of the High Level Committee would be placed before the Board for

its decision. Accordingly, a High Level Committee consisting of the Additional Director General of Police (Administration), Additional Director General of Police (Law and Order) and Additional Director General of Police (Intelligence) was constituted by the Director General of Police which forwarded its report to Government. On receipt of the High Level Committee report the Accelerated Promotion Board meeting was again held, to examine the report of the High Level Committee and to take a decision in the matter. The High Level Committee in its report among other things has recommended as follows:-

Thiru C.Ilango, Assistant Commissioner of Police (Inspector on 22.04.1997) and Thiru K.Mohan, Assistant Commissioner of Police (Inspector on 22.4.1997) whose contributions to the gallant encounter of 31.07.1996 were of a higher order and who suffered the maximum injury among the whole team deserves recognition. The above recommendation of the High Level Committee has been considered and accepted by the Accelerated Promotion Board to give accelerated promotion to Thiru C.Ilango, Assistant Commissioner of Police and Thiru. K.Mohan, Assistant Commissioner of Police as Additional Superintendent of Police. Further, the Accelerated Promotion Board meeting was again held for deciding the date of promotion to be awarded in the cadre of Additional Superintendent of Police (Category.I) to Tvl. C.Ilango and K.Mohan and decided to award accelerated promotion to Thiru C.Ilango, Assistant Commissioner of Police from 6.12.2004 and Thiru K.Mohan, Assistant Commissioner of Police from 14.10.2005 (The date of his promotion as Deputy Superintendent of Police) respectively. For accommodating them in the post of Additional Superintendent of Police the Director General of Police has requested to create two supernumerary post in the cadre of Additional Superintendent of Police (Category.I) separately.

3. The Government have carefully and independently examined the recommendation of the Accelerated Promotion Board and decided to accept the same. Accordingly Government direct the accelerated promotion to be given to Thiru C.Ilango, Assistant Commissioner of Police as Additional Superintendent of Police with effect from 6.12.2004 and to Thiru K.Mohan, Assistant Commissioner of Police as Additional Superintendent of Police with effect from 14.10.2005. The Government also order that two supernumerary posts in the cadre of Additional Superintendent of Police (Category.I) be created one post from 6.12.2004 and another post from 14.10.2005 in order to accommodate Tvl. C.Ilango, Assistant Commissioner of

Police from 6.12.2004 and K.Mohan, Assistant Commissioner of Police from 14.10.2005 as Additional Superintendent of Police respectively. The above said two supernumerary posts will be in existence till the incumbent's vacate the post on retirement from service or promotion to next higher rank or otherwise.

4. This order issues with the concurrence of Finance Department vide its U.O.No.54595/Home 1/2007, dated 17.8.2007.

(By Order of the Governor)

S.MALATHI

Secretary to Government

4.2. In the case of STF men who have been involved in the Veerappan's case, individual assessment of their act of bravery in eliminating the forest brigand was not made by the Government and the recommendation made by the Director General of Police and the Board which was constituted for the said purpose has not assessed the individual STF men pertaining to their part in eliminating the said Veerappan. But the case of the petitioner does not stand in the said position.

4.3. When individual assessment was made on the petitioner and the petitioner was granted accelerated promotion, the Government may not be justified in passing G.O.Ms.No.1396 dated 3.10.2007 in equating the petitioner along with the STF men referred to above. In the said G.O though it was passed in reference to the STF men referred to above, in the last para of the said G.O there is also a reference about accelerated promotion given to others. The same is extracted here under:-

"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."

5. A uniform stand cannot be taken by the Government in respect of the STF men referred to above and the case of the individual like the petitioner who have been accorded accelerated promotion for their acts of bravery. Further, in G.O.Ms.No.1252 dated 29.10.2004, it was referred that one stage of promotion were given to them but in respect of the accelerated promotion given to the petitioner in G.O.Ms.No.1246 dated 20.08.2007, such reference was not made.

6. It is not denied by the Government, that the petitioner was accorded accelerated promotion taking into consideration, the guidelines framed in G.O.Ms.No.468, followed by High Level Committed

constituted for such purpose.

7. Considering the above facts and circumstances, I am of the considered view that the refusal to accord promotion to the petitioner to the post of Superintendent of Police citing G.O.Ms.No.1396 Home [Pol-1A] Dept dated 3.10.2007 is wholly unjustified. Consequently, the G.O.Ms.No.1396 dated 3.10.2007, so far as denying promotion to the petitioner is liable to quashed and accordingly quashed. Consequently, I direct the respondents to consider including the name of the petitioner in the panel of promotion, fit for promotion to the post of Superintendent of Police from the year, which he is eligible but for G.O.Ms.No.1396 dated 3.10.2007. 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. The writ petition is ordered accordingly. Consequently, connected miscellaneous petitions are closed. However, no order as to costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
Home Department,
Fort St. George,
Chennai - 600 009.

2.The Director General of Police,
Tamil Nadu Police,
Chennai - 600 004.

1 cc To Mr.M.Sriram, Advocate, SR.57883

W.P.No.17312 of 2008

JRG (CO)
SS (18.11.2009)

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