

Madras High Court

C. Muthuswamy vs The Secretary To Government on 18 February, 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.02.2010

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The Hon'ble Mr. Justice R. SUDHAKAR

Writ Petition No.38413 of 2006

C. Muthuswamy

.. Petitioner

Vs

1. The Secretary to Government,  
Home (Police 1A) Department,  
Fort. St. George, Chennai 9

2. The Director General of Police,  
Chennai - 4

.. Respondents

Prayer: Original Application No.6695 of 1999 on the file of Tamil Nadu Administrative Tribunal

For Petitioner : Mr. K. Venkatraman

For Respondents : Mr. S. Shivashanmugam  
Government Advocate

ORDER

This writ petition is filed to call for the records of the respondent in connection with letter No.26449/Pol-1A/99/2 Home dated 10.05.1999 and quash the same and direct the respondents to promote the petitioner notionally by including his name in the panel of Assistant Superintendent of Police for promotion as Superintendent of Police for the year 97-98 as communicated by the first respondent in G.O. Ms. No.1096 Home Police 1-A Department, dated 28.07.1997 and grant him all consequential service and monetary benefits.

2. The petitioner/ retired Additional Superintendent of Police seeks certain benefits consequent to dropping of all departmental proceedings. He filed the original application No.1559 of 1999 wherein,

by an order dated 8.3.1999, the Tribunal passed the following order:-

" The learned counsel for the applicant submits that once the applicant is exonerated of the charges, his claim for promotion and other consequential benefits which were denied have to be duly considered and he should be granted, on par with his junior. The fact that the applicant has already retired from service does not debar him from being promoted as superintendent of police, notionally. The applicant is entitled to have notional promotion and other consequential service and monetary benefits on par with his juniors.

As per paragraph II, clause (iv) sub clause 3 of G.O.Ms.No. 368, P & AR Department dated 18.10.93, the case of the Government Servant whose promotion etc. has been deferred should be decided after the disposal of the charges and appropriate orders should be passed on merits.

In the circumstances, the respondents are directed to consider the claim of the applicant for inclusion of his name in the panel of the Additional Superintendent of Police fit for promotion as Superintendent of Police for the year 1997-98 and grant him notional promotion and other consequential service and monetary benefits on par with his junior within a period of three months from the date of receipt of a copy of this order. The application is ordered accordingly."

3. Based on the order of the Tribunal, the Secretary to Government considered the claim of the petitioner for consequential benefits. The relief that has been given by the Tribunal was denied by stating as follows:-

" I am to state that further action on the charges framed against you was dropped on the penultimate date of your retirement. Then you were allowed to retire from service on attaining the age of superannuation on 31.7.98. Thereafter you had no chance to act and discharge the duties in the post of Superintendent of Police (non cadre). By reckoning all these factors, the Government do not accept your claim for inclusion of your name in the panel of Additional Superintendent of Police (Cat.I) fit for promotion as Superintendent of Police (non cadre) for the year 1997-98."

4. The Government is bound to accept the direction issued by the Tribunal without any further demur as no appeal is filed and the order of the Tribunal is accepted. The order of the Tribunal has to be implemented in pith and substance and as a consequence of that order, the petitioner is entitled to the relief of inclusion of his name in the panel of Additional Superintendent of Police for promotion to the post of Superintendent of Police for the year 1998-1999. The Tribunal has clearly stated that the petitioner will be eligible for notional promotion and consequential service and monetary benefits on par with the junior.

5. In the light of the order of the Tribunal, the Government is not justified in rejecting the claim of the petitioner stating that the charges were dropped on the last date of retirement and therefore, he had no chance to act and discharge the duties of Superintendent of Police. Whether the petitioner serves or does not serve in the department in any capacity is of no consequence as the promotion is based on the service Rules. It is not based on the post or office that he will serve. If the petitioner is entitled to certain benefits based on the order of the Tribunal, the Government has no justification

to deny the same. The Government has totally misread the direction issued by the Tribunal. On the contrary, the order has to be implemented in pith and substances and even if the petitioner has retired, he is entitled to notional promotion and consequential service benefits as per the order of the Tribunal as if he is in service. The reason given in the impugned order is on a misreading of the Tribunal's order and it is also not based on any provisions of law or the service Rules as could be seen in the order impugned.

6. In such view of the matter, the impugned order is set aside. The writ petition is allowed. The Government is directed to pass appropriate orders in the light of the order of the Tribunal as above within three months from the date of receipt of a copy of this order. No costs.

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1. The Secretary to Government, Home (Police 1A) Department, Fort. St. George, Chennai 9
2. The Director General of Police, Chennai 4