

C. Murugesan Vs. State of Tamil Nadu Represented by Secretary to Municipal Administration and Water Supply Department and ors.

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Court : Chennai

Decided On : Dec-04-1996

Reported in : (1997)1MLJ398

Appellant : C. Murugesan

Respondent : State of Tamil Nadu Represented by Secretary to Municipal Administration and Water Supply Department

Advocate for Def. : Mr. A.R.L. Sundresan

Judgement :

ORDER

N.V. Balasubramanian, J.

1. The writ petitioner has challenged the panel of promotion of the Superintending Engineers drawn up by the Tamil Nadu Water Supply and Drainage Board (hereinafter referred to as 'TWAD Board') dated 7.8.1996. The prayer in the writ petition is to quash the Order of the TWAD Board dated 7.8.1996 in B.P. No. 226 issued pursuant to G.O. Ms. No. 172 dated 6.8.1996 of the Government of Tamil Nadu and to direct the respondents 1 and 2 to include the name of the pretitioner in the panel of promotion of Superintending Engineers above the names of respondents 3 to 8.

2. The writ petitioner joined the service of TWAD Board as Junior Engineer on 5.6.1961, and after several promotions, he was promoted to the post of Superintending Engineer on 8.10.1990. The next avenue of promotion of the Superintending Engineer is that of Chief Engineer. A panel for the promotion of Superintending Engineers to the cadre of Chief Engineer was earlier made in the year 1993, and the petitioner's name was not found in the said panel. The petitioner, therefore, challenged the said panel in W.P. 9287 of 1993 on the file of this Court, and this Court in an interlocutory application held that the promotions can be made according to the panel of promotion already drawn up, subject to the result of the writ petition filed by the writ petitioner. In 1996, certain vacancies arose in the post and cadre of Chief Engineer. In pursuance of the Government Order No. 172 dated 6.8.1996 issued by the Government of Tamil Nadu, TWAD Board issued a Board's proceedings No. 226 dated 7.8.1996, wherein the Board has approved the panel of names of certain Superintending Engineers fit for promotion as Chief Engineers in the order of preference as indicated in the said panel. The respondents 3 to 8 are the persons shown in the panel. According to the petitioners, the petitioner is senior to one Kothandapani and others, but his name is not included in the panel without any reason or rhyme. The petitioner has averred that his annual confidential reports have been uniformly good and there are no adverse remarks against the performance of his duties. The petitioner has stated that in the performance of his duties and on the aspect of merit and ability, he is not in any way inferior to the respondents 3 to 8. The petitioner has alleged that TWAD Board was vindictive in its approach and according to the petitioner, TWAD Board issued a charge memo No. 93718-Estt. (DP/A5/ /95-1) dated 25.10.1996 containing certain charges against the petitioner. According to the petitioner, he was working as Executive Engineer, Rural Water Supply Division, Vellore from 23.12.1985 to 12.3.1987 and the charges in the said proceedings related to incidents that took place prior to his assumption of the post of Executive Engineer at Vellore or subsequent to 12.3.1987, when he left Vellore's office. The petitioner has averred that the charges framed are flimsy in nature and they have been purposely framed on the eve of his promotion from the post of Superintending Engineer to the cadre of Chief Engineer, and to deprive him of the promotion to the next higher post. The petitioner also stated that the Enquiry

Officer has accepted the explanation given by the petitioner and has recommended dropping of the charges against him. The further allegation of the petitioner is that the names of one Rajangam and A.K. Doraiswamy, respondents 5 and 7 in the writ petition are included in the panel, though disciplinary proceedings are pending against them, the petitioner, therefore, contends that there is a discrimination against the petitioner practised by TWAD in the preparation of the panel for promotion. The petitioner also stated that the alleged incident took place before 1986, and that would not constitute a ground denying the promotion to the petitioner as Chief Engineer.

3. The second respondent has filed an affidavit wherein it is stated that the Government in G.O. MS. 368 P&A.R.; Department, dated 18.10.1993 issued a set of guidelines to all Government departments for the preparation of estimate of vacancies and for the preparation of panel for all categories. Since TWAD Board does not have a set of guidelines of its own, TWAD Board is following the instructions given by the Tamil Nadu Government. According to the instructions issued by the Government of Tamil Nadu, persons against whom specific charges have been framed or charge-sheet has been filed in a criminal case, promotion of such persons should be deferred till the proceedings are concluded. According to the second respondent, the post of Chief Engineer is a selection post, and the gravity of the proven irregularities based on which the punishment awarded, should be objectively evaluated for consideration of the names of the persons for their inclusion in the panel. The TWAD Board keeping the rules and the guidelines prescribed in mind drew up the panel of six Superintending Engineers fit for promotion as Chief Engineers, in June, 1996. The Board after detailed examination of all the materials placed before it made an assessment and recommended the names of eight persons of Superintending Engineers for their inclusion in the panel and decided to defer case of other superintending Engineers till the proceedings in which certain charges were framed and finalised. The writ petitioner is one such person whose name was deferred for selection by the Board. According to the second respondent, the Government accorded the approval for the panel of 6 Superintending Engineers without any deferment order and on the basis of the approval accorded by the Government, the Board has issued the impugned order. According to the second respondent certain charges

have been framed against the writ petitioner in relation to certain incidents while he was working as Executive Engineer, R.W.S. Division, Vellore on the ground that he was responsible for the non-recovery of unused materials of Rs. 1,97,304 from the contractors, and for extra financial commitment of Rs. 73,337 caused due to execution of the balance of work through other agencies. An Enquiry Officer has already been appointed to enquire into the charges and in addition to the writ petitioner, 9 other Officers are also charge sheeted for various irregularities. Though the enquiry officer has forwarded his report, it is for the disciplinary authorities to consider the case of the petitioner independently. The main case of the second respondent is that the petitioner is facing departmental proceedings under regulation 9-B of TWAD Board Employees' (Discipline and Appeal) Regulations, 1972 at the time of preparation of the panel during June, 1996 and therefore, according to the guidelines prescribed dated 24.12.1993, the name of the petitioner was recommended to be deferred till the proceedings pending against him are finalised. The second respondent also denied the contention that disciplinary proceedings are pending against one G. Rajangam and A.K. Duraisami, and it has been specifically stated that at the time of finalisation of the panel proposal, the said two persons were freed from the charges without punishment and on that account, their names are included in the panel. It is also stated in the affidavit that the third respondent was already promoted as Chief Engineer and respondents 4 to 8 are awaiting promotion and the writ petitioner is due to retire on 30.4.1997.

4. Mr. Rajangam, the 5th respondent has filed a separate counter-affidavit and he has denied the statement that he is facing disciplinary action and he has positively stated that he is not facing any disciplinary action and no disciplinary proceedings are pending against him.

5. A common counter-affidavit was filed by Duraisamy and Subramaniam, the respondents 7 and 8 wherein they have stated that the 7 and 8 where they have stated that the 7th respondent is not facing any disciplinary proceedings.

6. Mr. Somayaji, learned senior counsel appearing for the petitioner submitted that the confidential report of the writ petitioner shows that his service career is good

and there are no adverse remarks against him. Learned senior counsel submitted that the petitioner was working as Executive Engineer, Vellore during the period commencing from 23.12.1985 to 12.3.1987 and the charges were framed on 25.10.1995 relating to incidents that took place before he has assumed Office as Executive Engineer and also relating to the period subsequent to the period of his service as Executive Engineer at Vellore. According to the learned Counsel for the petitioner, he is not answerable to the incidents that occurred when he was not the Executive Engineer during that particular period. However the petitioner has submitted an explanation denying the charges and the Enquiry Officer has accepted the explanation and recommended dropping of the charges against him. Learned senior counsel contended that the petitioner is senior in the order of seniority above respondents 3 to 8 and the charges were framed on the eve of his promotion as Chief Engineer vindictively and with reference to certain events that had happened five years prior to the preparation of the panel for promotion. Learned senior counsel also submitted that charges were pending against Rajangam and Duraisami but still their names found a way in the panel for promotion and there is no reason why the petitioner's name alone should be excluded in the panel for promotion. We referred to the reply affidavit filed by the petitioner wherein he has stated that after the approval of the promotion, a new charge sheet has been filed against the said Rajangam.

7. Mr. V. Shanmugham, learned Counsel for the second respondent submitted that the name of the petitioner has been considered for the inclusion in the panel of promotion by the Board and the Board after having found that as against the writ petitioners charges have been framed for certain irregularities and hence the case of the petitioner for promotion was deferred till the charges framed are finalised. Learned Counsel for the second respondent submitted that according to the Government Order dated 18.10.1993 that in a cases where specific charges have been framed or charge sheets have been filed in criminal cases, promotion or appointment of such cases shall be deferred till the proceedings are concluded. Learned Counsel for the second respondent also states that if the concerned employee is exonerated from the charges and found otherwise eligible for promotion the employee will be given promotion with retrospective effect from the date on which his juniors were promoted. It is a case where the promotion of the

petitioner is deferred and if the petitioner is exonerated of all the charges framed against him and the petitioner is found suitable with reference to all other relevant criteria, the petitioner would be given promotion with retrospective effect from the date on which his juniors are promoted. Learned Counsel for the second respondent also submitted that it is not correct to state that the names of certain persons have been included against whose certain charges have been framed and pending on the date of preparation of the panel of promotion. He further submitted that the report of the Enquiry Officer is not final and conclusive and it is for the Disciplinary Authority to come to an independent conclusion with reference to the charges framed against the petitioner. According to the learned Counsel for the second respondent, the Board has carefully considered the case of the petitioner and other persons eligible for promotion and after applying its mind, deferred the promotion of the petitioner. He also submitted that the view of the Board was also approved by the Government. He also produced the Board's Agenda No. 68 wherein the Board has considered the name of Superintending Engineers for drawing up the panel for promotion to the post of Chief Engineer in the year 1996.

8. He has placed reliance on a decision of the Supreme Court in *Union of India v. Tejinder Singh* : (1991)4SCC129 wherein the Supreme Court has held that where the departmental enquiry is contemplated and pending against a particular employee, that would be a ground for withholding the consideration of the particular employee for promotion. He also relied on another decision of the Supreme Court in *C.C. Arumugham v. State of Tamil Nadu* (1991) 2 S.C.C. 199 wherein the Supreme Court has held that the promotion of persons against whom charges have been framed in disciplinary proceedings or charge-sheet has been filed in criminal case can be deferred till the proceedings are concluded. He therefore, submitted that the exclusion of the petitioner from the panel of promotion is appropriate and proper in view of the pendency of the charges and the nature of charges pending against the petitioner.

9. Mr. Chandru, learned Counsel for the fifth respondent submitted that his client is not facing any disciplinary action at the hands of the second respondent and no disciplinary proceedings were pending against him on the date of preparation of the panel. He also submitted that since the charges have been framed against the

petitioner and they were pending on the date of preparation of panel, the petitioner's name was rightly excluded from the panel of promotion.

10. Mr. A.R.L. Sundresan, learned Counsel for the respondents 7 and 8 submitted that it is incorrect to state that the 7th respondent is facing any disciplinary proceeding. He further submitted that when the earlier panel was issued in the year 1993, this Court has allowed the panel to be implemented and there is no impediment for the respondents 1 and 2 to issue further panel for the purpose of filling up the vacancies of Chief Engineers.

11. I have carefully considered the contentions raised on behalf of the learned Counsel for the petitioner as well as learned Counsel for the respondents. There is no dispute that a charge memo has been issued against the petitioner on 25.10.1995 with reference to certain irregularities pointed out in the internal audit report on the verification of the accounts of R.Ws. Division, Vellore. The petitioner was given the details of the irregularities arising from the non-recovery of unused materials from the Contractors and the involvement of extra financial commitment for the execution of the work through some other agencies. No doubt, it is true, the petitioner has submitted his reply on 20.2.1996 in which he has stated that the charges have been framed against the petitioner without proper verification of records and documents. He has also mentioned in the explanation that the alleged incidents have not happened during his tenure at Vellore as Executive Engineer from 23.12.1985 to 12.3.1987. However, it is significant to note that with reference to the explanation given by the petitioner, disciplinary authority has not given any finding one way or other, and the result is that on the date of preparation of the panel for promotion of Chief Engineers, the charges were pending against the petitioner. I have perused the Minutes of the Board to consider the names of the Superintending Engineers for drawing up a panel for the promotion of Chief Engineers in the year 1996. The Board has considered the names of 14 Superintending Engineers including that of the petitioner and excluded certain names from the panel on the ground that certain charges were pending against them. The accomplishment of each one of the Superintending Engineers was taken into consideration before ordering the inclusion of 6 Superintending Engineers fit for promotion as Chief Engineers. The proposal was sent to the

Government of Tamil Nadu to approve the names of six persons whose names are included in the promotion panel in the year 1996. The Minutes of the Board make it clear that there was an application of mind by the Board to each one of the persons eligible for the promotion, and after considering the case of each one of them carefully, the Board decided to include six persons on the basis of their performance, hence, it cannot be stated that the Board has not applied its mind before the preparation of promotion panel. It is also seen from the minutes that the case of the petitioner was not recommended for inclusion on the ground that charges are pending against the petitioner.

12. The case of the petitioner is that the charges framed against him are punitive in nature and they relate to a period when the petitioner was not working as Executive Engineer at Vellore. This Court is of the opinion that it is for the disciplinary authority to decide the question whether the charges framed are proved or not in a properly instituted enquiry and it is not open to this Court, exercising powers under Article 226 of the Constitution, to go into the question of validity of the charges or to substitute the views of the disciplinary authority. At the same time, it must be mentioned that neither the science has invented any *eo instanti* reliable scientific test, nor the computer can give a clue as to the correctness of the charges that were framed against an innocent employee. The petitioner and other employees like the petitioner, have necessarily go through the mill of the enquiry proceedings to establish their innocence against the charges framed and come out of the ordeal unscathed before their cases can be considered for promotion.

13. The decisions in Tejinder Singh's case : (1991)4SCC129 and C.O. Arumugham's case (1991) 2 S.C.C. 199, make it clear that the promotion of persons against whom charges have been framed in a disciplinary proceedings or charge sheet has been filed in a criminal case may be deferred till the proceedings are concluded. Since the promotion panel has been prepared, on the facts of the case, during the pendency of the enquiry proceeding against the petitioner, I am of the view that the exclusion of the petitioner from the promotion panel cannot be said to be illegal or improper. Further, G.O. 368 P & A.R. Department dated 18.10.1993 also makes it clear that the consideration of the promotion of persons

against whom enquiry proceedings are pending shall be deferred till the proceedings are concluded. TWAD Board which adopts the Government instructions as a part of its own, is bound to follow the said Government Order in the absence of any other statutory rule. The said Government Order also makes it clear that at the conclusion of the enquiry, if the employee is exonerated of the charges, the employee will be considered for promotion, if he is otherwise qualified and he will also be promoted with retrospective effect from the date on which his juniors are promoted. I am of the view, the said G.O. takes care of the cases where flimsy charges are framed or where the charges are framed which have no legs to stand. But, It must also be emphasised at the same time that this Court has the power nor jurisdiction to go into the question whether the charges framed were based on any material or evidence on record. If the charges were framed without any evidence or material or with mala fide intention just to deprive an employee of the chance of getting higher promotion, this Court must retain its jurisdiction and exercise the necessary power of judicial control over the action of the employer in framing flimsy charges. On the facts of the case, it is seen that there was an audit report which was submitted on the scrutiny of accounts of the Vellore Office and the report of the internal audit partly formed the basis for the charges framed against the petitioner. Though this Court did not have the privilege of looking into the contents were disclosed in the counter-affidavit filed by the second respondent, a fair reading of the chargesheet would show that the report of the internal audit partly formed the foundation for framing charges on 25.10.1995. Since the charges framed against the petitioner have the backing of the report of the internal audit partly and keeping in view the Government Order, which to certain extent takes care of flimsy charges, I am of the opinion that no interference is called for in the panel of promotion prepared by TWAD and approved by the Government of Tamil Nadu.

14. The Managing Director of the TWAD Board has given a specific undertaking in the affidavit filed before the Court to the effect that if the disciplinary authority i.e., the Managing Director holds that the petitioner is acquitted of the charges and if there are no other adverse facts, the Managing Director would take suo motu action within 15 days from the date of issue of such final order in the departmental disciplinary proceedings to bring the facts to the notice of the Government for

necessary reconsideration of the case of the petitioner. The undertaking given by the Managing Director is recorded and in view of the undertaking, I consider that the petitioner cannot be said to be really aggrieved as his chance of promotion is not affected in the sense that his case would be considered if he is discharged from the charges framed and if he is found otherwise eligible for promotion.

15. The next contention of the learned Counsel for the petitioner is that the persons against whom charges are pending are included in the promotion panel. TWAD Board has clearly stated in its affidavit that the persons who are included in the panel have no charges pending against them on the date of preparation of the promotion panel. I have also perused the minutes of the promotion panel and on perusal, it is seen that the persons against whom disciplinary proceedings were pending on the date of preparation of panel were excluded also four other persons have been excluded on the ground that charges were pending against those persons.

16. Learned senior counsel for the petitioner has submitted that the petitioner will be retiring in the month of April, 1997 and if the departmental proceedings are allowed to drag on, the petitioner will not be able to get the benefits of the promotion. I find force in the submission made by the learned Counsel for the petitioner. The enquiry proceedings have already been initiated and the petitioner has already submitted his explanation and according to the petitioner, the Enquiry Officer has also submitted his report in so far as the petitioner is concerned. Since the promotion of the petitioner depends upon the the final outcome of the proceedings initiated against the petitioner, I direct the Managing Director of T.W.A.D. Board to complete the Enquiry and pass a final order on the enquiry initiated against the petitioner on or before 15.1.1997. Consequently, the Writ Petition is dismissed with the above directions. No costs.