

**Central Administrative Tribunal
Madras Bench**

OA/310/00917/2016

Dated the 8th day of August Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

T.Rajendran, IPS (Retd.),
S/o C.Thiagarajan,
“Thendral' No.33, 3rd Street,
VGP Golden Beach Layout Part 2,
Near Golden Beach, Injambakkam,
Chennai 600041. .. Applicant
By Advocate **M/s.V.Sankaranarayanan**

Vs.

1. State of Tamil Nadu,
rep, by the Secretary to Government,
Home (Secret & Confidential) Department,
Fort St. George, Chennai 600 009.
2. Union of India, rep by the
Secretary to Government,
M/o Home Affairs,
North Block,
New Delhi 110001. .. Respondents

By Advocate **Mr.K.Rajendran (R2), Mr.V.Kathirvelu (R1)**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

This is an OA filed seeking the following relief:-

“To direct the 1st respondent to consider and promote the applicant as Director General of Police, with effect from 4.11.2014 or whenever vacancies in the grade of Director General of Police arose thereafter prior to his superannuation on 31.12.2015, with all consequential benefits including monetary benefits and pass such further or other orders as may be deemed fit and proper.”

2. According to the applicant, he belongs to the 1983 batch of Indian Police Service. He served in various capacities from the date of appointment and he was promoted as Additional Director General of Police in 2008. He retired from service in December 2015. The post of Director General of Police (DGP) is treated as 'above the super time scale' post. The eligibility criteria to the post of Director General is that the officer should have put in 30 years of service. A Screening Committee has to be constituted to assess the officers for promotion and it has to meet at regular intervals and draw panels for filling vacancies arising during the course of a year.

3. The cadre of DG in Tamil Nadu consists of 3 posts (1) DGP, Tamil Nadu (2) DGP/Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai and (3) DGP/Director, Vigilance & Anti-Corruption, Chennai.

4. The applicant had completed 30 years of service on 15.12.2013. There arose 2 vacancies in the rank of DGP in 2014. The 1st respondent did not take any steps to fill

up the post of DGP by the Screening Committee. But the Screening Committee was convened for the promotion to the rank of DIG, IG, ADGP etc. and they were approved and implemented in 2015. According to the applicant, as on 01.1.2015 there were 2 vacancies unfilled in the DGP grade. Thereafter two more vacancies arose by 30.6.15 due to retirement.

5. No promotions were made in 2014 and 2015 to the rank of DGP despite the existence of clear vacancies. According to the applicant, the selection was inordinately delayed with malice. He had made a representation to the competent authority on 13.10.15 and 21.10.15 requesting consideration for promotion before his retirement. Only just before his retirement i.e. on 28.12.2015 the 1st respondent sought concurrence from the 2nd respondent for filling up the DGP cadre and the 2nd respondent in turn gave his concurrence to the proposal on 18.1.16. Thereafter the 1st respondent convened the meeting of Screening Committee and on the basis of the recommendations, promoted 5 officers to the rank of DGP as per proceedings dated 19.2.2016. The applicant's name was not considered even though vacancies existed during the period of his service. As per letter of the Ministry of Home Affairs No.45020/11/97-IPS dated 12.5.2000, he is also entitled to be considered for promotion to vacancies for the period when he was in service.

6. According to the counsel for the applicant, the action of the respondents is arbitrary and illegal. The applicant has got a right to be considered for promotion.

7. The 1st respondent filed a counter stating that there is no vested right for getting promotion and he cannot claim it as a right. According to them, the DGP has not sought the 1st respondent for promotion of officers in the year 2014 and the 1st respondent considered proposals only for promotions to the post of Superintendent of Police, DIG and IG of Police and Addl. DGP. The 1st respondent admits the existence of 1 vacancy in the year 2014 and 2 vacancies in the year 2015. It was also admitted by the 1st respondent that Screening Committee did not meet in the year 2014 and 2015 for the post of DGP. It was also admitted that one Mr. Venkatakrishnan, IPS and Balachandran, IPS were granted promotion on par with juniors as per orders of court. According to the 1st respondent, since the applicant has already retired, he is not entitled to get promotion.

8. The 2nd respondent filed statement that officers who had put in 30 years of service are eligible for consideration for promotion to the grade of DGP. The 2nd respondent had produced a copy of the guidelines for promotion of members of IPS in the State cadre. It is the State Government who has to look into the matter and pass orders as per the recommendations of the Screening Committee.

9. We have heard the senior counsel Thiru R. Singaravelan who appeared for the counsel for the applicant and the counsels appearing for the respondents. The short point to be considered is 'whether the applicant has got a right to be considered for promotion to the cadre of DGP for the period 2014 and 2015?".

10. On a perusal of pleadings of the respondents, it can be seen that there existed one clear vacancy for the year 2014 and two more vacancies arose in the year 2015 and no Screening Committee had met for considering the promotion of officers to the cadre of DGP. In ***Union of India & Another v. Hamraj Singh Chauhan & Others (reported in 2010 (4) SCC 290)*** it was held as follows:-

“35. The court must keep in mind the constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a welfare State.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.”

11. In the above case the State of U.P. had not conducted cadre review in the State of U.P. between 1998 and 2003 without giving any plausible reason for not conducting the meeting. In this case also, the Tamil Nadu Government has not conducted Screening Committee Meeting for the years 2014 and 2015. The applicant who is eligible for promotion to the grade of DGP was not considered for promotion and ultimately he retired from service on 31.12.15. Immediately after his retirement, Screening Committee Meeting was conducted and promotions were given to 5 officers. Admittedly, 1 vacancy was there in 2014 and 2 vacancies arose in 2015

before retirement of the applicant, the respondents did not consider the name of the applicant though he came within the zone of consideration. No satisfactory reason is advanced for this by the respondents in this case. As per the revised guidelines No.45020/11/97-IPS dated 12.5.2000 "In case there is delay in holding the committee meetings for a year or more while considering the names year wise, the names of those officers who have since retired but fall under the zone of consideration for the relevant year may also be considered along with the other officers against the vacancies of that relevant year provided that they are eligible and would have been available had the meeting been held in tie for promotion in the grade".

12. In view of the above, we find that the applicant has a right to be considered for promotion to the cadre of DGP and the respondents had denied the same arbitrarily. The applicant was in service during 2014, 2015 and he was eligible and was within the zone of consideration. This Tribunal in OA 523/09 had occasion to consider a similar matter and the counsel for the applicant seeks to pass a similar order with respect to the applicant also. OA 523/09 is a case where the applicant one S.V.Venkatakrishnan, ADGP was not considered for promotion to the post of DGP for the year 2007. In that case, this Tribunal has directed the 2nd respondent therein to give notional promotion, which has been upheld by Hon'ble High Court and complied with by the respondents. This is also a similar case where the applicant was not considered for promotion to the rank of DGP in the year 2014 and 2015 though he was eligible for the same. Accordingly, we direct the respondents to consider the

case of the applicant, who had since retired, for giving notional promotion to the rank of DGP for the vacancies that arose prior to his superannuation on 31.12.2015 and pass appropriate orders. The applicant will not be entitled to get any back wages for such notional promotion. The notional promotion and consequent fixation of pay in the relevant cadre of DGP will be counted for fixation of pension and retiral benefits.

13. The respondents are hereby directed to complete the exercise within a period of four months from the date of receipt of a copy of this order.

14. The OA is disposed off with the above directions. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

08.08.2019

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