

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

OP (CAT).No. 106 of 2015 (Z)

AGAINST THE ORDER IN OA 180/00924/2014 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 10-03-2015

PETITIONERS/RESPONDENTS IN THE O.A.:

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1. UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY
HEADQUARTERS OFFICE, PARK TOWN P.O., CHENNAI-600 003.
 2. THE DIVISIONAL RAILWAY MANAGER
SOUTHERN RAILWAY, TRIVANDRUM DIVISION
TRIVANDRUM-695 014.
 3. THE DIVISIONAL PERSONNEL OFFICER
SOUTHERN RAILWAY, TRIVANDRUM DIVISION
TRIVANDRUM-695 014

BY ADV. SRI.V.K.MOHAMMED YOUSUF, CGC

RESPONDENT/APPLICANT IN OA.:

S.THANGAVEL
S/O.SAMIKANNU NADIR, RETIRED TRACKMAN
OFFICE OF THE SENIOR SECTION ENGINEER, PERMANENT WAY
SOUTHERN RAILWAY, TRIVANDRUM, RESIDING AT NO.110-A
KANJIRAVILA, ERANIEL, NEYYOOR P.O.
KANYAKUMARI DISTRICT, TAMIL NADU-629 802.

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 30-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT).No. 106 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1. TRUE COPY OF THE OA NO.180/00924/2014 FILED BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKUAM BENCH.

EXT.P2. TRUE COPY OF THE RP 54/2015 IN OP CAT NO.138/2014 FILED BEFORE THE HONOURABLE HIGH COURT OF KERALA.

EXT.P3. TRUE COPY OF THE REPLY STATEMENT IN OA NO.180/00924/2014 FILED BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKUAM BENCH.

EXT.P4. TRUE COPY OF THE INTERIM ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKUAM BENCH DATED 10/3/2015 IN OA NO.180/000924/2014.

**P. R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

O. P. (CAT) No.106 of 2015

Dated this the 30th day of July, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

This original petition has been filed against the interim order dated 10/03/2015 in O.A. No.180/00924/2014. When the matter came up for consideration on the last posting date, the learned Central Government Counsel was required to clarify as to how the proceedings could be maintained when the verdict already passed by another Division Bench of this Court in O.P.(CAT) No.138 of 2014 preferred against the order in O.A. No.1044 of 2010 still stands. Since a Review Petition was stated as filed, the O.P. was adjourned to this date with liberty to the petitioners to move the concerned Court where the R.P. is pending.

2. The factual position revealed from the original

petition shows that the respondent herein had approached the Tribunal earlier by filing O.A. No.1044 of 2010, whereby the relief claimed for absorption, with reference to the benefit extended to one Mr.Viswanathan, was projected. The Tribunal granted the benefit on the basis of the verdict passed already in the case of Viswanathan. The said order was sought to be challenged by filing O.P.(CAT) No.138 of 2014, contending that the absorption of Viswanathan was a case of 'mistake' and that the same was not liable to be extended to the applicant. In the said circumstances, the Bench passed an interim order on 28/08/2014 directing the concerned respondents to make available the details of action taken by them to rectify the alleged mistake and to file an affidavit before this Court in this regard. Though the matter was adjourned twice thereafter, no affidavit was filed as directed. It was in the said circumstances, that adverse

inference was drawn and the original petition was dismissed as devoid of any merit.

3. Since the benefit ordered to be paid by the Tribunal was not extended to the applicant, he moved the Tribunal again by filing O.A. No.180 of 2014. Observing that the matter had already become final, an interim order was passed on 10/03/2015, which reads as follows:

“In spite of the peremptory order dated 19.2.2015 for filing a reply as a final chance, no reply has been filed by the respondents.

Learned proxy counsel for the respondents submitted that the review petition filed by the Railways is pending before the Hon'ble High Court in relation to the previous litigation relating to the applicant herein. It is seen from Annexure-A1 that the applicant herein also along with others have been given notional service with effect from 3.11.2003 for the purpose of pension and other retiral benefits. According to the applicant no pension or any other retiral benefits have been given to him so far even after the order of this Tribunal in Annexure A1.

In the circumstances and since no concrete defence has been made in this matter so far, this Tribunal is inclined to direct the respondents to

pay the applicant provisional pension within one month subject to final outcome of this O.A. Ordered accordingly.

List the matter for final hearing on 19.6.2015.

Issue copies of this order to learned counsel appearing on both sides.”

It is against the said order, that the present original petition has been filed by the Union of India and the concerned authorities of the Railways.

4. As mentioned above, the pleadings reveal, that interference was declined by another Division Bench of this Court vide Ext.RA1 judgment. It is also seen that the petitioners have already moved the concerned Bench by filing Ext.P2 review petition. Unless the review petition is allowed and the matter is re-considered, the relief now sought for cannot be entertained by this Court.

In the above circumstances, interference is declined and this original petition is dismissed without prejudice to the rights and liberties of the petitioners to pursue Ext.P2

review petition and to proceed with further steps accordingly.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE