

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.02.2015

DELIVERED ON : 24.02.2015

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HON'BLE MR.JUSTICE MR.P.R.SHIVAKUMAR

W.P.No.22839 of 2014

K.V.Venkatachalam

... Petitioner

Versus

1. The Central Administrative Tribunal,
Madras Bench, Chennai-600 104
rep. by its Registrar, CAT, High Court Campus,
Chennai - 600 104.

2. Union of India, rep. by the
Chief Postmaster General,
Tamilnadu Circle,
Chennai - 600 002.

... Respondents

Petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorarified Mandamus after calling for the records relating to the order dated 23.1.2013 of the first respondent, Tribunal passed in OA No.135 of 2012 and orders dated 13.12.2013 in RA No.49 of 2013 in OA No.135 of 2013 and quash the same and consequently to direct the second respondent to cancel all the irregular promotions in HSG-I given not as per the Recruitment Rules from 14.09.2001.

For Petitioner : Mr.K.V.Venkatachalam (Petitioner in person)

For Respondent-2 : Mr.N.Ramesh, CGSC.

R1 : Tribunal.

ORDER
V.RAMASUBRAMANIAN, J

The petitioner has come up with the above writ petition, challenging an order of the Central Administrative Tribunal, rejecting his claim for modifying the date of promotion to the post of LSG and HSG with retrospective effect with consequential benefits.

2. We have heard Mr.K.V.Venkatachalam, petitioner appearing in person and and Mr.N.Ramesh, learned Central Government Standing Counsel, appearing for the second respondent.

3. The petitioner was appointed as a Postal Assistant, way back in the year 1967. In an examination conducted for promotion to the post of Lower Selection Grade (LSG), the petitioner qualified on 21.9.1981 and was empanelled. However, he could not be promoted, as there were no sufficient vacancies and as persons who qualified in the previous examinations also remained unabsorbed.

4. In the year 1983, the department introduced two schemes known as Time Bound One Promotion (TBOP) Scheme and Biennial Cadre Review (BCR) Scheme. As per the TBOP Scheme, the petitioner was given financial upgradation equivalent to LSG cadre on 30.11.1983 upon his completion of 16 years of service. It was only financial upgradation and not promotion.

5. By a letter of the Directorate dated 19.11.1984, the 1/3rd quota of Lower Selection Grade was abolished with effect from 1.1.1983 and the LSG vacancies for the years 1981 and 1982 were directed to be filled up on the basis of seniority cum fitness.

6. Upon completion of 26 years of service, the petitioner was given financial upgradation on 1.7.1993, under the BCR Scheme. This was only a financial upgradation and not promotion.

7. A few persons who qualified in the examination for 1/3rd quota of LSG approached the Central Administrative Tribunal by filing applications. These applications were allowed by the Central Administrative Tribunal holding that persons who passed the qualifying examinations held in 1978 and 1981 for promotion to the 1/3rd quota of LSG, should be promoted. As against the order so passed by the Central Administrative Tribunal, the Union of India filed a batch of writ petitions in W.P.Nos.7286 to 7293 of 2001. The writ petitions were allowed by a Division Bench of this Court by an order dated 12.4.2005 passed in Union of India vs. N.Santharaman [CDJ 2005 MHC 907].

8. Thereafter, the petitioner was promoted to Lower Selection Grade, on 23.8.2007 on the basis of his seniority. However, the petitioner filed O.A.No.892 of 2007 on the file of the Central Administrative Tribunal, Madras Bench, seeking a direction to promote him to the post of HSG-I from the year 2002-2003 on the basis of the order of the Tribunal rendered in O.A.No.528 of 2007 filed by a person by name M.Murugaiah. This application was allowed by the Tribunal in favour of the petitioner, directing the department to consider the petitioner for promotion to LSG cadre on notional basis with effect from the date of promotion of his junior in the circle gradation list.

9. Before the said order could be given effect, the petitioner reached superannuation on 30.4.2008. However, the department filed a writ petition in W.P.No.5490 of 2010 against the order of the Tribunal in O.A.No.892 of 2007. This writ petition was dismissed by the Division Bench of this Court by an order dated 2.8.2010. A Special Leave Petition in SLP No.34211 of 2010 filed by the department was also dismissed by the Supreme Court on 10.10.2011. Therefore, the order passed by the Tribunal in O.A.No.892 of 2007 in favour of the petitioner attained finality.

10. Similarly, the order passed by the Division Bench of this Court in W.P.No.7286 to 7293 of 2001, also got confirmed with the dismissal of Civil Appeal Nos.4533 to 4535 of 2007 by a order dated 13.4.2011.

11. Consequently, the orders of the Tribunal in O.A.No.892 of 2007 passed in favour of the petitioner were implemented on 2.12.2011. As per the said order, the petitioner was given notional promotion (1) to the LSG cadre with effect from 4.10.2001, (2) to HSG-II cadre with effect from 16.5.2007 and (3) adhoc promotion to HSG I cadre with effect from 16.6.2007. As a consequence, the terminal benefits of the petitioner were also revised and the differential amounts of Gratuity, Earned Leave encashment and Commutation of pension etc., were also settled. The pension was also refixed and the arrears of pension were also credited into his account.

12. However, the petitioner started giving representations seeking notional promotion (1) to LSG cadre from 11.12.1981, (2) to HSG-II cadre from 1.10.1991 and (3) to HSG-I cadre from 1996. The department refused, forcing the petitioner to file an application in O.A.No.135 of 2012 before the Central Administrative Tribunal. The application was dismissed by the Tribunal by an order dated 23.1.2013. The petitioner filed a Review Application in RA No.49 of 2013. But the same was also dismissed by the Tribunal by an order dated 13.12.2013. Therefore, challenging the orders passed both in the main Original Application and in the Review Application, the petitioner has come up with the above writ petition.

13. The petitioner has filed a long written argument. The main thrust of his argument is that the decision of the Division Bench of this Court in W.P.No.7286 to 7293 of 2001 dated 12.4.2005 cannot be relied upon. On the contrary, it is his contention that the decision rendered by the Division Bench of Andhra Pradesh High Court on 17.3.2008 in Union of India vs. N.Venkat Rao in W.P.No.2373 of 2008 should be relied upon. Since the order of the Andhra Pradesh High Court is the latest, the petitioner claims that the order of the Division Bench of this Court should be ignored.

14. But, we are unable to accept the said contention. A perusal of the order of the Division Bench of the Andhra Pradesh High Court in W.P.No.2373 of 2008 would show that the entitlement of persons like the petitioner to promotion with retrospective effect, was not considered in great detail by the Andhra Pradesh High Court. On the contrary, the Division Bench of this Court went into detail with reference to the provisions of the P & T Manual. Therefore, the Madras Bench of the Central Administrative Tribunal was bound by the order of the Division Bench of this Court.

15. In any case, the petitioner is guilty of huge delay and laches. When persons like him approached the court way back in 1994-95, the petitioner simply sat on the wall and watched the proceedings. Today his claim is for giving him retrospective promotion from 1981 to the post of LSG and from 1991 to the post of HSG. He did not raise a little finger when he was denied promotion at that time. Therefore, the claim is highly belated.

16. Moreover, the petitioner approached the Tribunal for the first time in O.A.No.892 of 2007 comparing him with one M.Murugaiah. The Tribunal granted the relief and the same was also confirmed by this Court and the Supreme Court. It is not the case of the petitioner that the order in O.A.No.892 of 2007 has not been properly given effect to. Therefore, to rake up one more issue in the year 2012 by filing O.A.No.135 of 2012, without raising such a claim in the previous application in O.A.No.892 of 2007, will be squarely hit by the principles analogous to res judicata.

17. In any case, the petitioner is unable to point out who are the juniors, who have got promotion to the LSG from 1981 and to HSG from 1991. The petitioner has retired on 30.4.2008. His application seeking retrospective promotion from 1981 was filed in the year 2012. Therefore, the rejection of his claim by the Tribunal is perfectly in order and the same does not call for any interference. Hence, the writ petition is dismissed. No costs.

Sd/-

Asst. Registrar

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Sub Asst. Registrar.

GR

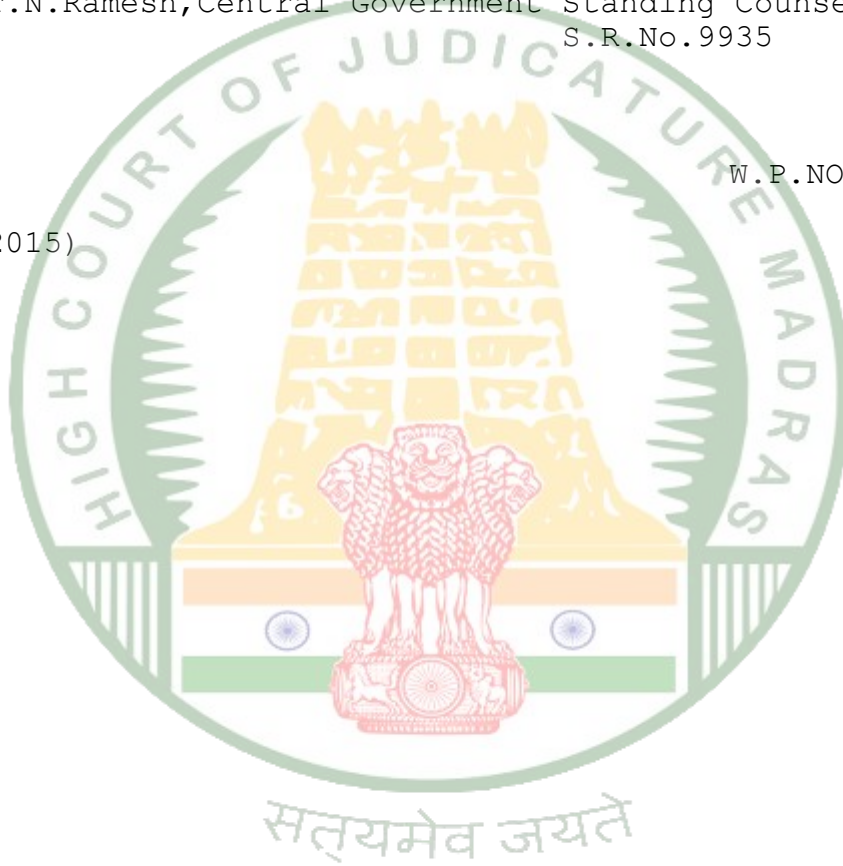
To

1. The Central Administrative Tribunal,
Madras Bench, Chennai-600 104
rep. by its Registrar.
2. Union of India, rep. by the
Chief Postmaster General,
Tamilnadu Circle, Chennai - 600 002.

+1cc to Mr.N.Ramesh,Central Government Standing Counsel,
S.R.No.9935

W.P.NO.22839 OF 2014

BVR(CO)
CA(06/03/2015)



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