

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2015

CORAM

THE HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

W.P.No.26505 of 2014

and

M.P.No.1 of 2014

- 1.Union of India,
rep.by the General Manager,
Southern Railway,
Park Town,
Chennai-600 003
 - 2.The Chief Personnel Officer,
Southern Railway,
Park Town,
Chennai-600 003
 - 3.The Financial Advisor & Chief Accounts Officer,
Southern Railway,
Park Town,
Chennai-600 003
- Petitioners

vs.

- 1.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104

- 2.Mankalaswamy
- ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the entire records of the first respondent in O.A.No.731 of 2011 including the order dated 30.07.2013 and to quash the same.

For Petitioners

..

Mr.V.Radhakrishnan, S.C.
for Mr.V.G.Suresh Kumar

ORDER

(Order of the Court was made by V.RAMASUBRAMANIAN,J.)

The writ petition arises out of an order of the Central Administrative Tribunal, Madras Bench, allowing an application filed by the second respondent herein directing the writ petitioners to step up the pay of the second respondent on par with his juniors.

2. Heard Mr.V.Radhakrishnan, learned Senior counsel appearing for the petitioners and Mr.A.Abdul Ajees, learned counsel appearing for the second respondent.

3. The second respondent herein was initially appointed as a Fireman 'A' in the Southern Railway. After several promotions, he reached the position of Assistant Divisional Mechanical Engineer, on 2.5.2008. Since the normal date of his increment was the first July of every year, he exercised an option, upon promotion to the post of Assistant Divisional Mechanical Engineer, to have his pay fixed in the promoted post with effect from 1.7.2008. It was granted. The second respondent also retired from service on 31.3.2011.

4. After the second respondent got promoted to the higher post, the Railway administration passed an order on 19.10.2009, stepping up the pay of two persons by name R.Ramalingam and V.Ganesan, who were working as Junior Loco Inspectors. By virtue of such stepping up, those juniors started receiving the basic pay of Rs.26,630/-, while the basic pay received by the second respondent in the promoted post was only Rs.24,670/-. Therefore, the second respondent started making representations. Since the representations did not evoke any response, the second respondent went before the Central Administrative Tribunal, Madras Bench and filed O.A.No.731 of 2011 praying for stepping up of pay on par with his juniors. The said application was allowed by the Tribunal, forcing the Southern Railway to come up with the above writ petition.

5. The dates on which the benefits were granted to the juniors of the second respondent and the date on which the second respondent got promoted are all not disputed. While the second respondent was appointed in the Loco Supervisory cadre on 1.1.1981, his juniors R.Ramalingam and V.Ganesan came to the Loco Supervisory Cadre only on 19.07.1995 and 24.10.2005, respectively. It is not the case of the second respondent that while continuing as Loco Inspector, any of his juniors got a higher pay than him.

6. What happened was that by virtue of his seniority, the

second respondent got promoted on 2.5.2008. Even on the date of promotion, his juniors in the post of Loco Inspectors were receiving only a lesser pay. For the purpose of having the benefit of one increment in the lower post, which would have his pay fixation in the higher post at a higher stage, the second respondent opted to have the pay fixed in the higher post only with effect from 1.7.2008. Even on the said date, no pay anomaly arose between the second respondent and his juniors, in the lower post.

7. For the first time, a pay anomaly, which we have a doubt to look at as pay anomaly itself, arose only in October 2009, when those two persons got their pay stepped up in the post of Junior Loco Inspectors. On the date on which their pay was stepped up, they were in a lower post. The date on which they got their post stepped up was only 19.10.2009. On that date, the second respondent was working in a higher post. Therefore, the Tribunal was fundamentally in error in comparing the pay band of the second respondent with the pay bands of those two persons.

8. The second respondent relied upon the circular R.B.E No.136/09, dated 24.07.2009. But as per the Circular, the first and foremost condition for getting the benefit of stepping up of pay was that both the junior and the senior should belong to the same cadre. Paragraph No.3(a) of the said Circular dated 24.07.2009 reads as follows:

"3. The benefit of stepping up of pay band will be subject to the following conditions:-

(a) Both the junior and the senior Railway servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre and other conditions enumerated in Note 10 below Rule 7 of RS (RP) Rules, 2008 should also be fulfilled."

9. Unfortunately, the second respondent did not fulfil the said condition. Mr.Ramalingam and Mr.V.Ganesan with whom the petitioner made a comparison, did not belong to the same cadre and the same post as the second respondent belonged to. Therefore, the said Circular could not have been relied upon by the second respondent to seek stepping up of pay.

10. Even Fundamental Rule 22, which is adopted by the Railway administration, under Rule 1313 of the Railway Manual, cannot go to the rescue of the second respondent. Something can be called a pay anomaly only when it arises between the holders of the same post in the same cadre. It is true that if the second respondent had continued to remain in the lower post without promotion, he would have had the benefit of stepping up of pay. But once he had moved

over to the higher grade and once his juniors in the lower post got stepping up of pay after more than a year, the higher pay drawn by them could not be taken to be an anomaly either within the meaning of FR 22(1) or within the meaning of RBE.136/2009 dated 24.07.2009. Therefore, the Tribunal was in error in allowing the claim for stepping up of pay. Hence, the writ petition is allowed and the order of the Tribunal is set aside. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msk

To

The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104.

1 cc to Mr. .V.G.Suresh Kumar, Advocate, SR.No.5665/15
W.P.No.26505 of 2014

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