

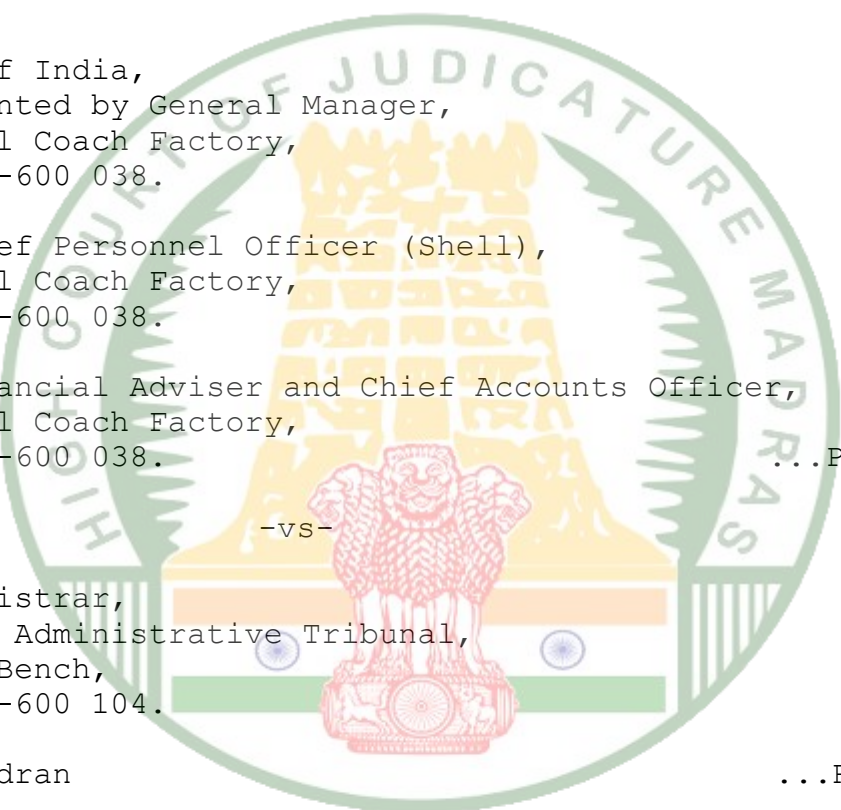
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-10-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P.No.30891 OF 2015

- 
1. Union of India,
represented by General Manager,
Integral Coach Factory,
Chennai-600 038.
2. The Chief Personnel Officer (Shell),
Integral Coach Factory,
Chennai-600 038.
3. The Financial Adviser and Chief Accounts Officer,
Integral Coach Factory,
Chennai-600 038.Petitioners
- vs-
1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104.
2. G.RajendranRespondents

Writ Petition under Article 226 of the Constitution of India, praying for issuance of writ of certiorari, to call for the records of the first respondent in O.A.No.310/00585/2014, dated 25.03.2015 and quash the same.

For Petitioners : Mr.Vellaisamy,
for M/s.V.G.Suresh Kumar.

O R D E R

S.Manikumar, J.

Challenge in this appeal, is to the order made by the Central Administrative Tribunal, Madras Bench, in O.A.No.310 of 2014, dated 25th March, 2015, by which the Tribunal has directed the General Manager, Integral Coach Factory, Chennai, to refix the pension and calculate the retirement benefits with effect from 01.12.2011, taking into consideration the last drawn pay of Rs.12,550, drawn by the respondent, as Progressman, in the scale of pay of Rs.5200-20200, with Grade Pay of Rs.2800/-, as per the Service Certificate S(3)E-11944, dated 30.11.2011, issued by the Office of the General Manager/PB, Integral Coach Factory, Chennai, and to issue the revised pension payment order.

2. Facts, in a nutshell, are as follows :

2.1. The respondent was originally appointed in the post of Khalasi in Integral Coach Factory (ICF), Chennai, on 09.12.1998, was working as Technician Grade-II. Pay drawn in the said post was Rs.11,790/- in the scale of pay of Rs.5200-20200 + 2400 Grade Pay. He was promoted to the post of Progressman/Electrical Ex-cadre/Elec.Officer, Integral Coach Factory, by way of selection, after written examination held on 16.11.2011. His pay in the new post was fixed as Rs.12550/- in the pay scale of Rs.5200-20200, with Grade Pay of Rs.2800/-, as per the Office Order, dated 25.11.2011. He was relieved on 25.11.2011 from the post of Technician Grade-II, on promotion and directed to report to the Senior Section Engineer, as per letter, dated 25.11.2011 of the Senior Section Officer/WS/Shop/39. Accordingly, on 25.11.2011, the respondent reported to the said Officer and taken charge of the new post of Progressman, on promotion, with higher responsibility.

2.2. The respondent retired on attaining the age of superannuation on 30.11.2011, as Progressman. His last drawn pay in the said post was Rs.12550, in the scale of pay of Rs.5200-20200 with Grade Pay of Rs.2800. Service Certificate, dated 30.11.2011, has been issued to him, as Progressman/Electrical and that the rate of pay, on his leaving service was Rs.12550/-.

2.3. It is the case of the respondent that though he retired as Progressman/Electrical with the last drawn pay of Rs.12550/- in the abovesaid scale of pay, in the Pension Payment Order,

dated 01.12.2011, issued to him, the designation has been indicated as Grade-II Electrical, and the last drawn pay has been mentioned as Rs.11790/-, and based on that, pension and other retirement benefits have been arrived at. Being aggrieved by the same, the respondent made a representation, dated 09.01.2012, followed by a reminder, dated 02.04.2012, to the Assistant Personnel Officer/Welfare-ICF, Chennai, and to the Deputy Chief Personnel Officer, ICF, Chennai, on 30.05.2012, respectively, requesting them to fix the pension, by calculating the pension, based on the last drawn pay i.e., Rs.12550/- in the scale of pay of Rs.5200-20200, with Grade Pay of Rs.2800/-, and, accordingly, to pay the arrears, therefrom. Though the grievance of the respondent was placed before the Pension Adalat on 27.08.2012, there was no fruitful result. Hence, the respondent was constrained to file O.A.No.310 of 2014, before the Central Administrative Tribunal, Madras Bench.

2.4. Before the Tribunal, Union of India, represented by General Manager, ICF, Chennai and two others/writ petitioners, submitted that on the date of superannuation, the respondent was officiating in the extra post of Progressman. However, the pension and other retirement benefits were calculated and sanctioned, based on the pay of Rs.11790/- in the cadre post of Technician Grade-II (Electrical). According to them, for settlement of pension and other retirement benefits, in the scale of pay of Rs.12550-20200 + 2800 Grade Pay, the respondent should have officiated continuously for a period of at least 22 days in the higher grade, in terms of Railway Board's letter, dated 16.09.1969. They further contended that the Service Certificate, issued to the respondent, indicated only the designation and the pay of the post held by the respondent on the date of superannuation i.e., 30.11.2011, and it is not relevant to be reckoned for settlement and pension benefits, in terms of the abovesaid Board's letter. According to them, the respondent had worked only for a period of six days, and such a short period of officiating is not recognised, as effective officiating, and that, therefore, the retirement and other service benefits were granted, as per the pay, admissible only in the lower grade.

2.5. Reference has also been made to the instructions on the subject, for fixation of pay under Rule 2018 (B)-FR-22-C-R-II, which reads as follows :

"A question has been raised whether in the case of a Railway servant, who though promoted

to higher post did not effectively officiate in that post continuously for a minimum period of 22 days due to his reporting sick or proceeding on leave, pay in the higher post can be fixed under Rule 2018-B (FR-22-C) R-II, with reference to the pay in the lower post, on his re-promotion to the same post.

It is clarified that if a Railway servant after his promotion to a higher post does not put in 22 days continuous officiating service in the higher post on account of his proceeding on leave, or reporting sick, he is not deemed as having discharged the full duties and responsibilities of the higher post and therefore, such short periods of officiating are not recognised as effective officiating and the Railway servant is paid only pay admissible to the lower grade and as such on the date of his rejoining the duty of the officiating post from which he proceeded on leave, his officiating pay is to be fixed again under rule 2018-B(FR-22-C)R-II with reference to his pay in the lower grade."

2.6. However, before the Tribunal, the respondent has placed reliance on an earlier order passed by the Central Administrative Tribunal, Madras Bench, in a similar case in O.A.No.307 of 2010, and confirmed by this Court in W.P.No.30441 of 2011, dated 09.01.2012.

2.7. Adverting to the rival contentions, submissions and taking note of the aforesaid order of this Court, vide order made in O.A.No.310 of 2014, dated 25.03.2015, the Central Administrative Tribunal, Madras Bench, directed the writ petitioners, to fix pension and calculate the retirement benefits of the respondent with effect from 01.12.2011, taking into consideration the last drawn pay of Rs.12,550, drawn by the respondent as Progressman/Electrical, in the scale of pay of Rs.5200-20200, with Grade Pay of Rs.2800/-, and pass appropriate orders, within a period of three months from the date of receipt of a copy of the order made by the Tribunal, and communicate the same to the respondent.

3. Assailing the correctness of the order made by the Tribunal, Mr.Vellaisamy, learned counsel for the writ petitioners, reiterated the submissions made before the Tribunal. Emphasis was made to Rule 49 of the Railway Services (Pension) Rules, 1993, wherein it is stated that "emoluments" for the purpose of calculating various retirement and death benefits, means, the basic, as defined in Clause (i) of Rule 1303 of the Indian Railway Establishment Code-Vol.II, which the railway servant was receiving, immediately before retirement. He also submitted that as per Clause (i) of Rule 1303, 'Pay' means, the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him, substantively or in officiating capacity or to which he is entitled, by reason of his position in a cadre. It is the further contention of the learned counsel for the writ petitioners that the abovesaid rule should be read in harmony with the Board's letter, dated 16.09.1969, which stipulates that a minimum of 26 days of continuous and officiating service, to claim eligibility and benefit in the cadre pay of Rs.12550/-, which, according to the writ petitioners, has not been satisfied by the respondent, as he had worked in the ex-cadre post for a period of six days only. Attention of this Court was also invited to the instructions on the subject, for fixation of pay, under Rule 2018 (B)-FR-22-C-R-II, extracted supra.

4. We have heard the learned counsel for the writ petitioners and perused the materials available on record.

5. Indisputably, vide order, dated 25.11.2011, from the post of Technician, Grade-II, carrying the pay scale of Rs.5200-20200 + 2400 Grade Pay, the respondent has been promoted to the post of Progressman (Electrical), carrying a pay scale of Rs.12550-20200 + Rs.2800 Grade Pay, and that he has officiated in the promoted post for six days, prior to superannuation on 30.11.2011. Admittedly, pension of the respondent has been fixed with reference to the pay drawn in the lower post of Technician, Grade-II.

6. When the matter came up for hearing earlier, attention of the learned counsel for the writ petitioners was drawn to the notice of deletion of FR(22-C) and that he was directed to get instructions, as to whether there could still be a Rule 2018 (B) under FR-22-C-Rule II, imposing any condition by the department for effective officiating in the promotional post continuously for a period of 22 days, for fixing the pay. Notwithstanding the

same, going through Rule 2018 extracted supra, it was also prima facie opined that the conditions stated supra, in strict sense, cannot be applied to the case of respondent, as there was no case of proceeding on leave, or reporting sick, after promotion to the higher post. The respondent had only six days between 25.11.2011, the date of promotion, and 30.11.2011, the date on which he attained superannuation.

7. Reverting, Mr.Vellaisamy, learned counsel for the writ petitioners, submitted, that, after the amendment made to FR-22-C, instructions have been issued by Government of India, Ministry of Railways, Railway Board, in proceedings No.RBE No.199-91 No.F(E)II/89/FR-1/1, New Delhi, dated 12.12.1991, wherein it is stated that, in exercise of the powers conferred by proviso to Article 309 of the Constitution, the President was pleased to direct that Rules 1313 (FR-22), 1316(FR-22C), 1325 (FR-30) and 1326(FR-31) of the Indian Railway Establishment Code, Vol.II, (Sixth Edition-1987), be amended/deleted, as in the advance copy of Correction Slips 14 and 15 sent herewith. (2) These Rules will not apply to ad-hoc promotions from Group 'B' to Group 'A' and ad-hoc promotions within Group 'A' for which separate orders issued by the Ministry of Railways will hold good. (3) In all matters, not specifically covered under these Rules, Ministry of Railways Orders/President's decisions, issued from time to time, as contained under erstwhile Rules 1313 and 1316, will continue to apply. (4) These rules shall come into force from the date of issue.

8. As per His Excellency, The President's decision, it is clarified that Rule 1316 shall be applicable in such cases also, provided that the Railway servant is entitled to draw pay in the scale of pay attached to the higher ex-cadre post, in accordance with the terms of deputation or transfer, sanctioned for him; where, however, according to the terms of deputation or transfer, the Railway servant is given grade pay of the post held by him in his own ex-cadre plus deputation allowance or special pay at a fixed rate or related to such grade pay, the question of applying provisions of Rule 1316 shall not arise. Similarly, in the case of the Railway servant, who draws the scale of pay attached to ex-cadre post, if he reverts to his parent cadre and is appointed in that cadre to a post higher than ex-cadre post immediately held before reversion, his pay shall be fixed in accordance with Rule 1316, with reference to the pay drawn or admissible to him, in the post in his cadre, except with the benefit of service, rendered up to 17.11.1966,

in the ex-cadre post, in an identical scale of pay or in higher scale of pay, be given for pay fixation/increments in the post in the parent service/cadre, to which the officers revert to the extent permissible under orders in force prior to 18.11.1966. In this case also, the orders shall not be applicable, if, in the ex-cadre post, the Railway servant has been allowed to draw pay on the basis of his pay, in the parent cadre and deputation allowance or special pay.

9. Clarifications to Rule 1316 also indicates that the Railway servant is entitled to draw the pay in the scale of pay, attached to the ex-cadre post.

10. Reading of the order, dated 25.11.2011, of the Senior Personnel Officer/WS, shows that the respondent and the other person, Mr.Saravanan have been found suitable to the post of Progressman/Junior Progressman/Electrical Ex-cadre, vide Panel No.PB/CON/76/XVIII, dated 25.11.2011, and, vide Office Order No.PB/S3/EL/173/1679, dated 25.11.2011, they were promoted/transferred with the approval of CEGE, against the existing vacancies of the ex-cadre post of Progressman and Junior Progressman (Electrical). The respondent Rajendran has been promoted from Technician, Grade-II, with the pay of Rs.11790/- in the scale of pay of Rs.5200-20200 + Rs.2400 Grade Pay to the pay of Rs.12550/- in the scale of pay of Rs.5200-20200 + Rs.2800/- Grade Pay, in the ex-cadre post of Progressman. He has retired from service on 30.11.2011. It is also not the case of the writ petitioners that the respondent was given pay, based on in his own cadre post plus deputation allowance or special pay, at a fixed rate or related to such grade pay. On the contrary and admittedly, the respondent has been given scale of pay, attached to ex-cadre post. When FR-22-C has been amended, the question of applying Rule 2018 (B)-FR-22-C-R-II, does not arise. Even taking for granted that the said rule is applicable, the conditions for applying the rule, that after his promotion to a higher post, he did not put in 22 days of continuous officiating service in the higher post, on account of his proceeding on leave or reporting sick, do not exist in this case, as the respondent has joined duty immediately, without proceeding on leave or reporting sick.

11. In W.P.No.30441 of 2011, Union of India, represented by General Manager, Southern Railway, Chennai, and Others v. T.Chinnaswamy and Another, the respondent therein was promoted as a Senior Technician, on ad-hoc basis. His pay was fixed at

Rs.9300-34800 with Grade Pay of Rs.4200/-, with effect from 18.07.2009, as per the order, dated 22.07.2009, in the post of Senior Technician. On completion of 14 days, he retired on attaining superannuation on 31.07.2009. Settlement papers of the respondent therein, were sent to the Senior Accounts and Financial Adviser, vide letter, dated 30.06.2009. Taking note of the fact that the respondent therein had not completed a minimum of 21 days of officiating period in the higher post, on promotion on ad-hoc basis, the pay of the respondent in the lower grade post alone was taken into consideration, for settlement benefits. In support of the above, the Railway Board's letter, dated 16.09.1969, was applied. Consequently, the pay in favour of the respondent therein as Senior Technician vide memo, dated 22.07.2009, issued earlier was cancelled, and, accordingly, communicated to the respondent. The respondent therein has submitted a representation, seeking fixation of pay in the higher post and that the same was rejected. Being aggrieved by the same, he preferred O.A.No.307 of 2010, before the Central Administrative Tribunal, Madras Bench, and the same was allowed. Challenging the said order, the Union of India, represented by the General Manager, Southern Railway, Chennai, and Others have filed W.P.No.30441 of 2011. Going through the material on record and upon hearing the learned counsel for the petitioners therein, at paragraphs No.6, a Hon'ble Division Bench of this Court, vide order dated, 09.01.2012, held as follows :

"6. On going through the entire materials placed on record, we see no reason to entertain the writ petition on the ground that the petitioners have rejected the claim of the first respondent merely on the basis of the letter of the Board, which states that, 'if a Railway servant, after his promotion to a higher post, does not put in 22 days of continuous officiating service in the higher post on account of his proceeding on leave or reporting sick, he is not deemed to have discharged the full duties and responsibilities of the higher post and therefore, such short periods of officiating are not recognised as effective officiating and the Railway servant is paid only the pay admissible in the lower grade'. A reading of the above said letter indicates that a Railway servant, after promotion to a higher

post, if not able to put in 22 days of continuous officiating service on account of his proceeding on leave or reporting sick, is not deemed to have discharged his full duties and responsibilities in the higher post and therefore, he is not entitled for payment in the higher post."

12. Referring to the letter, dated 16.09.1969, of the Railway Board, which is also applied in the present case, the Hon'ble Division Bench, at paragraph 12, held as follows:

"12. We are unable to agree with the stand taken by the petitioners in cancelling the pay of the first respondent fixed in the promotional post and rejecting the request made by him for fixation of pay in the higher post, by applying the Board's letter, dated 16.09.1969, which is applicable in the case of a Railway servant, who was promoted to a higher post, and if he is not able to discharge the responsibilities and functions of the abovesaid higher post for about 22 days of continuous officiating service in the place of an employee proceeding on leave or reporting sick, he is not eligible for the higher pay fixed or attached to the said post."

13. The Hon'ble Division Bench also took note of Chapter II, Section 'B', Rule 216-A (i) of the Indian Railway Establishment Manual (Vol.I), which governs the promotional group of Group 'C' Staff of the Railway Board and which deals with the ad-hoc promotion against selection and non-selection posts, which reads as follows :

"13. On the other hand, Chapter II, Section 'B', Rule 216 A (i) of the Indian Railway Establishment Manual (Volume I), which governs the promotion of Group 'C' Staff of the Railway Board and which deals with the ad hoc promotion against selection and non-selection posts, reads as follows:-

"Ad hoc promotions should be avoided as far as possible both in selection and non-selection posts, and where they are found incapable and have to be made in the exigency of service, they should be resorted to only sparingly and only for a short duration of 3 to 4 months. The ad hoc promotion should be ordered only from amongst seniormost suitable staff. As a rule, a junior should not be promoted ignoring his senior."

14. With reference to the said rule, the Hon'ble Division Bench, at paras 14, 17 and 18, observed and held as follows :

"14. After going through the aforesaid provision of law, it is made clear that a caution was given only to the authorities to avoid to make ad hoc promotions as far as possible both for selection and non-selection posts, and in the circumstances, where they are found incapable and have to be made in the exigency of service, they should be resorted to only sparingly and only for a short duration of 3 to 4 months, the ad hoc promotion should be ordered only from amongst the seniormost suitable staff and as a rule, a junior should not be promoted ignoring his senior.

17. Therefore, on perusal of the proceedings of the Railway Board, dated 16.07.2009 and 18.07.2009 read with Rule 216 A(i) of the aforesaid Rule, it is made clear that the petitioners cannot deny the pay or pensionary benefits as per law for which the first respondent is entitled to. As we have already held that there is no term fixed under Rule 216 A (i) of the aforesaid Rules of the Board on the employees, who were promoted on ad hoc basis against a selection and non-selection post, but on the other hand, the Rule cautioned the authority, who is going to promote a Railway servant to a limited period of three to four months to meet the exigencies of service and also considering the seniority, suitability and

eligibility, but not to consider the junior for promotion ignoring the senior. Further, both the proceedings of the Board and the Rule referred to above are applicable in two different circumstances and the Board's letter cannot be applicable to the case of the first respondent, whereas he is entitled to get benefits as per Rule 216A(i) of the aforesaid Rules of the Railway Board.

18. For the foregoing discussion, we are of the considered opinion that the action of the petitioners in rejecting the claim made by the first respondent by applying the proceedings of the Railway Board, which is contrary to Rule 216 A(i) of the aforesaid Rules, is illegal and hence, the orders passed by the petitioners dated 02.11.2009 and 10.12.2009 are liable to be set aside and they are, accordingly, set aside. The order passed by the Central Administrative Tribunal is confirmed. The writ petition is dismissed."

15. In T.Chinnaswamy's case, cited supra, W.P.No.30411 of 2011, decided on 09.01.2012, the respondent has worked for 14 days, whereas, in the case on hand before us, the respondent has worked for six days. Objection based on the Railway Board's Circular, dated 16.06.1969, for continuous officiating service of 22 days had already been rejected by the Hon'ble Division Bench. Rule 216-A (1) of the Indian Railway Establishment Manual (Vol.I) has been considered and it is also opined by the Hon'ble Division Bench that the action of the Union of India, represented by General Manager, Southern Railway, Chennai and Others, in rejecting the claim of the respondent therein, by applying the proceedings of the Railway Board, which are contrary to Rule 216-A (i) of the aforesaid Rules, has been held to be illegal. Decision made in W.P.No.30441 of 2011, dated 09.01.2012, is squarely applicable to the case on hand. FR-22-C has been deleted. The President's decision, is also in favour of the respondent. Rule 2018 (B)-FR-22-C-R-II, cannot be made applicable to the case of the respondent.

16. In the light of the above discussion, we do not find that the writ petitioners have made out any case, for interfering with the order of the Central Administrative Tribunal, Madras Bench, in O.A.No.310 of 2014, dated 25th March, 2015. Hence, this Writ Petition is dismissed. Consequently, the connected M.P.No.1 of 2015 is closed. Directions of the Central Administrative Tribunal, Madras Bench, in the above Original Application shall be implemented within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

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

W.P.No.30891 OF 2015

RSK (CO)
PSI (28.10.2015)

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