

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.7.2015.

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

W.P.No.3532 of 2015
and
M.P.No.1 of 2015

B.V.Gandhimathi

Petitioner

vs.

- 1 D.G.O.F. and Chairman
Ordnance Factory Board
No.10A S.K.Bose Road
Kolkatta 700 001.
- 2 The Additional D.G.O.F
Armoured Vehicles Headquarters
Avadi Chennai 600 054.
- 3 Union of India
Rep. by Secretary
Ministry of Defence
Department of Defence and Production and
Supply
New Delhi.
- 4 The Central Administrative Tribunal
Chennai Bench
Rep. by its Registrar
High Court Compound
Chennai 600 104.

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records relating to order dated 8.7.2014 in O.A. No.1274/2012 and RA No.53/2014 dated 1.12.2014 passed by the 4th respondent Tribunal and quash the same by allowing the said O.A and to direct respondents 1 to 3 to promote the petitioner to the Post of Assistant Staff Officer on par with her juniors and to grant TA at double the normal rates from the date of her disablement with arrears of pay and all other consequential benefits.

For Petitioner : Mr.P.V.S.Giridhar for
M/S.Giridhar and Sai

For RR 1 to 3 : Mr.D.Simon

ORDER

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

The petitioner, whose claim was partially allowed by the Central Administrative Tribunal, has come up with the above writ petition challenging one portion of the order of the Tribunal.

2. Heard Mr.P.V.S.Giridhar, learned counsel appearing for the petitioner and Mr.D.Simon, learned Standing Counsel for the respondents.

3. The petitioner joined services of the second respondent Factory as Lower Division Clerk in the year 1989 through Staff Selection Commission. She was later promoted as Upper Division Clerk in the year 1997 and as Assistant in the year 2004.

4. It appears that on 7.4.2001, she met with a major road traffic accident. She claims to have suffered 80% disability in the said accident and she joined duty, after undergoing a spate of surgeries, on 2.2.2002.

5. When she made a claim for double travelling allowance, which a physically disabled person is entitled to, the same was rejected by the administration. Challenging the same, the petitioner filed an application in O.A.No.1274 of 2012 on the file of the Central Administrative Tribunal, Madras Bench. The Tribunal found that the respondents had paid travelling allowance at double the rates from the date on which the Medical Board certified. The Medical Board certified the entitlement of the petitioner only from 1.12.2008. Therefore, the first grievance of the petitioner is that her entitlement to travelling allowance at double the rates starts from the date of the accident i.e., on 7.4.2001 and it cannot be from the date of the certification by the Medical Board i.e., on 1.12.2008. The second grievance of the petitioner is that she did not particularly focussed the case for reservation in the matter of promotion to the next higher post under the category of physically disabled. But, the Tribunal negatived a claim that was yet to be made by the petitioner, without any enquiry.

6. We have carefully considered the grievances of the petitioner. Insofar as the first grievance is concerned, we are of the view that the Tribunal has done justice to the extent possible. Though technically the petitioner is entitled to travelling allowance at double the rates from the date on which she suffered disability and

not from the date on which the disability was certified, we are of the considered view that there was also some delay on the part of the petitioner. Therefore, the restriction of the benefit from 2008 to the petitioner cannot be found fault with.

7. Insofar as the second grievance is concerned, it is seen from a copy of the original application filed by the petitioner before the Tribunal that the petitioner never projected her case before the Tribunal for the grant of promotion under 3% quota reserved for the physically disabled. She did not ask for reservation benefits under section 45 of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995. Therefore, it was unnecessary for the Tribunal to have considered whether the petitioner was entitled to the benefits of 3% quota in the higher post by way of promotion. That question did not arise for consideration before the Tribunal and therefore, after clarifying that the question of promotion was not an issue before the Tribunal and as a consequence, the observation of the Tribunal cannot be taken up to attach any finality to the claim, the writ petition is dismissed. No costs. The connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

ssk.

To

- 1 D.G.O.F. and Chairman
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Kolkatta 700 001.
- 2 The Additional D.G.O.F
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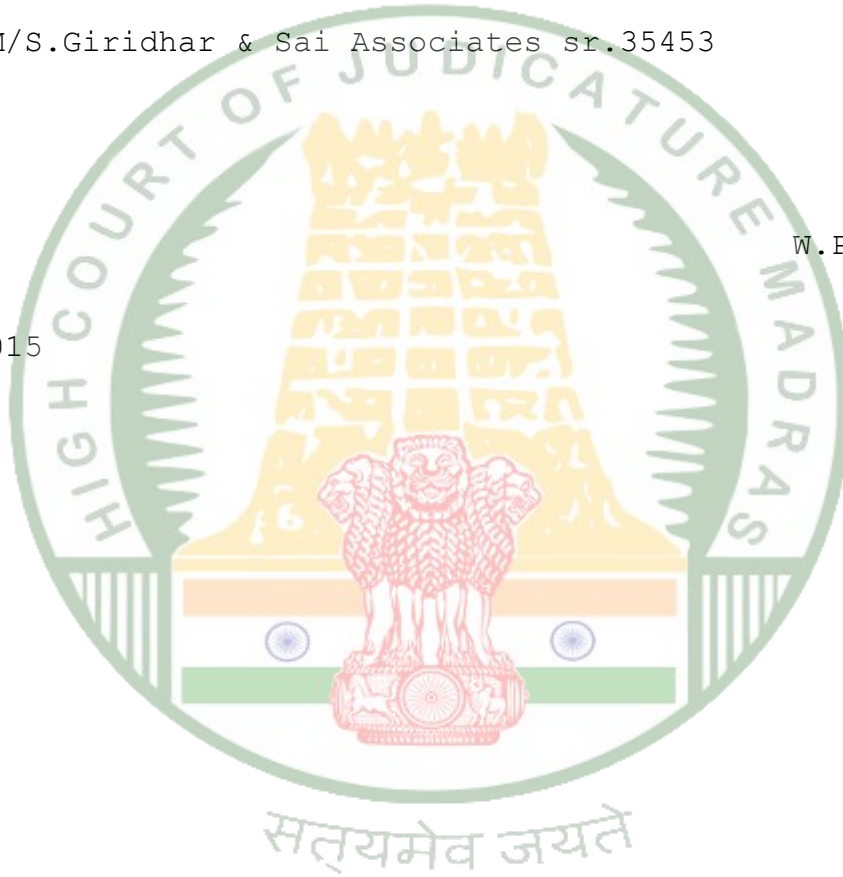
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+1 cc to M/S.Giridhar & Sai Associates sr.35453

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