

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.15952 of 2014

1. B.Gajendran
2. P.Gopal
3. M.Chakrapani
4. N.Sundaram
5. V.Seethapathi
6. K.Chinappan

... Petitioners

vs.

1. The Senior Divisional Security Commissioner (RPF)
Chennai Division,
5th Floor, NGO Annexe,
Southern Railway,
Chennai 600 003.
2. The Chief Security Commissioner/RPF,
6th Floor, Moore Market Complex,
Southern Railway,
Chennai 600 003.
3. The Sr. Divisional Accounts Officer,
4th Floor, NGO/Annexe,
Southern Railway,
Chennai 600 003.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of mandamus, directing the first respondent to dispose of the representation dated 12.02.2014 on merits, within a time frame.

For Petitioners : Mr.C.Regu Rajan

For Respondents : Mr.V.G.Suresh Kumar

O R D E R

The petitioner has come up with this Writ Petition seeking a direction to the first respondent to dispose of the representation dated 12.02.2014 on merits, within a time frame.

2. According to the petitioners, they were appointed in the Railway Protection Force as Constables and later promoted to the rank of Head Constable. After serving the force in various places, they retired from service. It is the further case of the petitioners that after the implementation of the V Pay Commission, the Junior Constables who were promoted as Head Constables were drawing more pay than the Senior Constables promoted as Head Constables, prior to 01.01.1996. This anomaly was resolved by stepping up of pay of the Seniors on par with that of the Juniors.

3. Since the petitioners' juniors were drawing more pay than the petitioners, the petitioners approached the Administration to rectify the anomaly and they were informed to identify a junior who was drawing more pay than them. Accordingly, with much difficulty, the petitioners identified one Mr. Arjunan, who is junior to all of them and drawing more than the petitioners and requested that their pay be stepped up on par with him. In this regard, the petitioners sent a detailed representation on 12.02.2014 to the first respondent requesting for stepping up of pay on par with their junior Arjunan with a copy marked to the second and third respondents, but no action was taken till date. Being aggrieved by the indifferent attitude of the respondents and finding no other alternate efficacious remedy, the petitioners have approached this Court.

4. When the matter is taken up for consideration, learned counsel for the petitioners submitted that the petitioners' grievance will be redressed if the respondents are directed to consider and pass appropriate orders on the petitioners' representation.

5. Learned counsel appearing for the respondents/Railway Board, by filing a detailed counter, submitted that a reply was issued to the petitioners by the 1st respondent under Letter dated 23.10.2013, bearing No.M/XP/535/Stepping up of pay/13 stating that their claim does not come within the ambit of the conditions stipulated in Railway Board letter dated 01.10.1999 bearing No.PC-V/1999/I/1/1 (RBE No.233/1999), more specifically in para-3(i).

6. With regard to other averments of the petitioners, the respondents have stated that stepping up of pay is granted in terms of Railway Board letter dated 04.02.2010 bearing No.PC-V/2003/1/6/2 (RBE No.27/2010) and that the petitioners have compared their case with that of one Shri. Arjunan, whose appointment and grade of promotion are different from that of the petitioners. Further, in the Railway Board's Circular

No.PC-V/99/I/1/1, dated 01.10.1999 (RBE No.233/1999), regarding grant of Assured Career Progression to the employee, it is mentioned in paragraph 8, Annexure-I of the said letter that pay in Assured Career Progression is personal to the employee and hence, no stepping up of pay on account of anomaly/variation in Assured Career Progression pay is allowed between senior and junior.

7. According to the respondents, in the case on hand, both the petitioners (senior) and the junior employee (staff with whom the petitioners' compare themselves) have secured pay fixation under Assured Career Progression during 01.10.1999 and the difference in pay arose only after the grant of benefit under the Assured Career Progression Scheme to both of them. Hence, the petitioners' claim for stepping up of pay cannot be considered as per the existing Railway Board's Circulars.

8. Learned counsel for the Railway Board further relied on RBE No.233 of 1999 issued by the Railway Board, wherein, in paragraph 8 of Annexure - I, it is stated as follows:

"8. The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his/her seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employees in the grade has got higher pay scale under the ACP Scheme."

9. A reading of the above Clause shows that financial upgradation is purely personal to the employee. In this connection, the Railway Board has issued a letter dated 04.02.2010 to the General Manager, All Indian Railways stating as follows:

"3. The stepping up of pay in these cases will be subject to fulfillment of the following conditions:

(i) both senior and junior employees belonged to the same cadre and the posts in which they have been promoted should be identical in the same cadre;

(ii) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(iii) the senior employee at the time of promotion had been drawing equal or more pay than the junior; and

(iv) the anomaly should be directly as a result of the application of the provisions of Rule 1313 (FR22) of IREC-II or order regulating pay fixation on such promotion in the revised scale.

10. In the instant case, the appointment and grade of promotion of the junior employee, with whom the petitioners compare themselves, are different. Therefore, in the considered opinion of this Court, the petitioners cannot seek stepping up of pay with such person. Moreover, it is pertinent to note that the 1st respondent has issued a letter dated 23.10.2013 to the petitioners stating that their claim does not come within the ambit of the conditions stipulated in the Railway Board and the same has not been challenged by the petitioners.

11. Hence, this Court is not inclined to give any direction to the petitioners, as they have not made out a strong case to consider their claim. Accordingly, this Writ Petition stands dismissed, as it is devoid of merits. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To :

1. The Senior Divisional Security Commissioner (RPF)
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Chennai 600 003.

1 cc to Mr.V.G. Suresh Kumar, Advocate, Sr. 71094

1 cc to Mr.C. Ragurajan, Advocate, Sr. 70321

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RJ (CO)

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