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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.08.2016
DELIVERED ON: 05.08.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Petition No.16 of 2014

S.Thangavelu Petitioner

-vs-

1.Union of India,
rep.by the Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai,
Chennai-600 002

2.The Postmaster General,
Western Region(TN),
Coimbatore-641 002

3.The Superintendent of Post Offices,
Namakkal Division,
Namakkal-637 211

4.The Registrar,
Central Administrative Tribunal,
Madras Bench,
High Court Campus,
Chennai-600 001

. . . . Respondents

WRIT Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus, calling for the records pertaining to the order of 4th respondent which is made in O.A.No.1572 of 2011 dated 24.09.2013 and quash the same, consequent to direct the respondents 1 to 3 to grant 3rd MACP benefit and to pay the arrears of difference of pay and allowances to the petitioner and also revise and re-fix the pensionary benefits and to pay the difference of arrears of pension and connected terminal benefits to the petitioner.

For Petitioner : Mr.R.Malaichamy
For Respondents : Mr.V.Venkatesan, SCGSC for R1 to R3



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ORDER

(Judgment of the Court was delivered by
A.SELVAM, J)

This writ petition has been filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, calling for the records pertaining to the order passed by the fourth respondent in Original Application No.1572 of 2011, dated 24.09.2013 and quash the same and also for directing respondents 1 to 3 to grant the reliefs sought by the petitioner.

2. The petitioner herein, as applicant, has filed Original Application No.1572 of 2011, on the file of the Central Administrative Tribunal, Madras Bench, wherein, respondents 1 to 3 herein have been arrayed as respondents.

3. It is averred in the Original Application that the applicant has joined as Postal Clerk, on 28.07.1973. After completion of 36 years of service, he retired on 31.01.2010 as BCR Postal Assistant. The applicant has received two financial upgradations. He claimed third financial upgradation, on completion of 30 years of service. In the meantime, the applicant had been offered Standard Lower Selection Grade (LSG), on regular basis, on 20.07.2007. The applicant has declined promotion to LSG cadre by his representation dated 2.8.2007 and his declination has been accepted by the first respondent. The respondents have refused 3rd financial upgradation under MACP Scheme, in the light of the instructions contained in paragraph No.25 of Annexure-I of the the Directorates O.M.No.47/(MACPS)/2009-PCC, dated 18.9.2009. As per the said instruction, if regular promotion has been offered, but the same has been refused by an employee before claiming financial upgradation, no financial upgradation shall be allowed. Instruction has further stated that an employee will not be eligible to be considered for further financial upgradation till he agreed to be considered for promotion again. The next financial upgradation shall also be deferred to a period of debarment due to his refusal. In order to set aside the refusal order, the present Original Application has been filed.

4. The Central Administrative Tribunal, after considering the rival contentions raised on either side and by way of relying upon paragraph No.25 of Annexure-I, has rejected the claim of the applicant, by way of passing the impugned order and the same is being challenged in the present writ petition.



5. The learned counsel appearing for the writ petitioner/applicant has sparingly contended that the writ petitioner/applicant has joined as a Postal Clerk on 28.07.1973 and after completion of 36 years, he has been permitted to retire on 31.01.2010 and before introduction of 3rd upgradation, he completed 30 years of service and even though during his service, he refused to accept promotion, the embargo created in paragraph No.25 of Annexure-I is not applicable to the petitioner/applicant and the Central Administrative Tribunal, without considering the applicability of paragraph No.25 of Annexure-I, has erroneously dismissed the Original Application and therefore, the order passed by the Central Administrative Tribunal, is liable to be quashed.

6. Per contra, the learned counsel appearing for respondents 1 to 3 has argued solely on the basis of paragraph No.25 of Annexure-I.

7. The short point that involves in the present writ petition is as to whether the inhibition available in paragraph No.25 of Annexure-I is applicable to the case of the petitioner/applicant and the same reads as follows:

"If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not been stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the second and the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal."

As adverted to earlier, the Central Administrative Tribunal has declined to accept the claim of the petitioner/applicant only on the basis of paragraph No.25 of Annexure-I.

8. It is an admitted fact that the scheme has been introduced on 01.09.2008. But before introduction of the said scheme, the petitioner/applicant has completed 30 years of service, even in the year 2004. Since the concerned scheme has been introduced on 01.09.2008 and even prior to introduction of the said scheme, the writ petitioner/applicant has completed 30 years of service, it is needless to say that the inhibition available in paragraph No.25 of Annexure-I is not at all applicable to the petitioner/applicant.



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9. As pointed out earlier, the Central Administrative Tribunal has rejected the claim of the petitioner/applicant only on the basis of inhibition available in paragraph No.25 of Annexure-I. The entire defence of respondents 1 to 3 is also based upon the said inhibition.

10. Considering the fact that the scheme has been introduced in the year 2008 and the petitioner/applicant has completed 30 years of service even in the year 2004, even though he has declined to accept promotion during tenure of his office, the embargo available in paragraph No.25 of Annexure-I is not at all applicable.

11. At this juncture, the Court has to look into the order passed in Original Application No.1 of 2012 by the Central Administrative Tribunal, Madras Bench, on 24.11.2015. It is not an exaggeration to say that the case of the petitioner found therein is nothing but identical facts mentioned in the Original Application No.1572 of 2011. The Central Administrative Tribunal has categorically held in O.A.No.1 of 2012 that the applicant therein has completed 30 years of service before introduction of Scheme and even if he refused to accept promotion, he is entitled to get 3rd upgradation. Since the Central Administrative Tribunal, in O.A.No.1 of 2012, has subsequently passed such kind of order, the same position of law is also applicable to the present case. Under the said circumstances, the order passed by the Central Administrative Tribunal, Madras Bench, in O.A.No.1572 of 2011 is liable to be quashed and O.A.No.1572 of 2011 is liable to be allowed and consequently, the petitioner/applicant is entitled to get all benefits claimed by him.

In fine, this writ petition is allowed without cost. The order dated 24.09.2013 passed in O.A.No.1572 of 2011 by the Central Administrative Tribunal, Madras Bench, is quashed and O.A.No.1572 of 2011 is allowed as prayed for, without cost.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

msh



To

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1. The Registrar,
Central Administrative Tribunal,
(Chennai Bench), Chennai
 2. The Chief Post Master General,
Union of India, Tamil Nadu Circle,
Anna Salai, Chennai-2.
 3. The Post Master General,
Western Region (TN), Coimbatore. 541 002.
 4. The Superintendent of Post Office,
Namakkal Division, Namakkal 637 211.
- + 1 cc to M/s. R. Malaichamy, Advocate Sr.44527
+ 1 cc to M/s. V. Venkatesan, Advocate Sr.44492

W.P.No.16 of 2014

RP(CO)
E 02.09.16