

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT PETITION No.5213 OF 2015

The Union of India,
rep. By the General Manager,
Cordite Factory, Aruvankadu,
The Nilgris - 643 202

... Petitioner

Vs.

1.E.Krishnan

2.The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Campus,
Chennai 600 104.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, calling for the records in respect of the impugned order passed by the 2nd respondent Tribunal dated 09.04.2014 in O.A.No.1377 of 2011 and quash the same.

For Petitioner : M/s.Venkataswamy Babu

For 1st Respondent : Mr.Parthiban
for M/s. Ayyar & Iyer.

सत्यमेव जयते
O R D E R

(Order of the Court made by S.VAIDYANATHAN,J.)

The Union of India has filed the above Writ Petition challenging the impugned order dated 09.04.2014 passed by the 2nd respondent/Tribunal in O.A.No.1377 of 2011, wherein, the prayer sought by the 1st respondent/applicant to consider his case for second ACP financial upgradation in the scale of Rs.5000-8000 and also to consider him for hierarchical promotion to the posts of Electrician (Highly Skilled)/Master Craftsman and Chargeman after dropping of charges against him, was answered in his favour.

2. It is the case of the 1st respondent/applicant before the Tribunal that he was appointed as Labourer 'B' on 18.12.1965 and having passed the competency test in the trade of Wireman, he was appointed as Wireman (Semi Skilled) and Electrician (Skilled), which post he held till his superannuation on 31.08.2005 in the scale of Rs.4000-6000. In the meantime, on 10.03.2002, he was issued with a Charge Memo under Rule 14 of the CCS(CCA) Rules on the allegations of (i) contracting a second marriage without legally divorcing the first wife; (ii) contracting second marriage without obtaining permission from the Government and (iii) suppression of material information regarding his marriage after his appointment. Subsequently, the said charge memo was dropped on 10.03.2002 suo motu by the appellant/Department. It is the grievance of 1st respondent that due to the said proceedings, he was not considered for promotion to the posts of Electrician (Highly Skilled), Master Craftsman, Chageman and also second financial upgradations in the scale of Rs.5000-8000 was not granted even after dropping of the charges. It is his further grievance that his representations did not yield any fruit and that the Department has not reviewed his promotion, which has got a direct bearing on his pension and terminal benefits. According to 1st respondent, he was eligible for 2nd financial upgradation in the scale of Rs.5000-8000 with effect from 09.08.1999 and not in the scale of Rs.4000-6000 w.e.f. 01.10.2001.

3. The writ petitioner, who is the official respondent before the Tribunal, has not disputed the fact that the 1st respondent joined the service of the Department as a Labourer 'B'; got promoted as Wireman in the scale of Rs.210-290 on 03.12.1979; further promoted as Electrician (Skilled) and then as Electrician (Highly Skilled) w.e.f. 20.05.2003 in the scale of pay of Rs.4000-6000. According to the writ petitioner, at the time of superannuation of 1st respondent on 31.08.2005, disciplinary case against him was not finalised and hence, he was given only provisional pension. However, due to the dropping of charges, all the retirement benefits were paid to him. As the 1st respondent has not earned further promotion within the period of 24 years of service, he was granted the 2nd financial upgradation under ACP Scheme in the next hierarchical scale of Rs.4000-6000 with effect from 09.08.1999 vide order dated 31.07.2009 and that he is not eligible for grant of ACP II in the scale of Rs.5000-8000. The promotion from Electrician (Skilled) to Electrician (Highly Skilled) w.e.f. 20.05.2003 was treated as a functional post and as such, he was not granted monetary benefits.

4. It is further stated by the Department that the 1st respondent has not completed 10 years to be promoted to the post of Electrician, Master Craftsman and to the post of Chageman, as he did not complete the residency period of 3 years of

service in Electrician HS and also not passed the Electrical Supervisory Competency test, which is mandatory requirement for considering promotion to the post of the Chargeman/Tech (Electrical). It is also stated by the Department that after dropping of the penalty and setting aside the charges levelled against him, the consequential monetary benefits as eligible to the 1st respondent was paid to him.

5. Subsequently, the 1st respondent filed a detailed rejoinder reiterating his contentions and stated that the post of Wireman carrying the pay scale of Rs.210-290, Semi skilled, Group D post was upgraded as Skilled post in the scale of Rs.260-400, a Group C Industrial post as per the decision of the Anomalies Committee, w.e.f. 16.10.1981. According to the 1st respondent, his movement to the pay scale of Rs.260-400 or change of designations are not on account of promotion but only due to merger of posts, re-categorisation of posts due to implementation of departmental anomaly committee recommendations and orders. Therefore, it is his contention that by treating the appointment as promotion, the Department has denied financial upgradations to him under the ACP Scheme.

6. Learned counsel for the writ petitioner/Department contended that the Tribunal's observation that the 1st respondent's movement from Labourer 'B' to the post of Wireman was an appointment, is against the facts of the case. It is his further contention that the direction of the Tribunal to give further financial upgradation to the 1st respondent is beyond the scope of the service rules as well as ACP scheme itself.

7. Heard the learned counsel on either side and perused the records carefully.

8. The fact that the 1st respondent/applicant was initially appointed as Labourer 'B' in the year 1965 and then appointed as Wireman with effect from 08.12.1979 in the scale of pay of Rs.210-290 is not in dispute. The said scale was upgraded to that of Rs.260-400 as Skilled Grade as per the decision of the Expert Committee. The said upgradation in the pay scale cannot be treated as promotion and denial of first financial upgradation under the ACP Scheme is not correct. The Tribunal has rightly accepted the contention of the 1st respondent and directed the writ petitioner herein to consider the case of the 1st respondent for 2nd financial upgradation under the ACP Scheme. When charges were withdrawn suo motu by the Department unconditionally, there is no bar for the Department to consider the case of the 1st respondent for further promotion in the posts of Master Craftsman and Chargeman. Except denying the fact that it is a case of promotion, no material is produced before us to prove the same.

9. Hence, we do not find any error apparent on the face of the order passed by the Tribunal, when the fact remains that no charges are pending against the 1st respondent/applicant. Accordingly, this Writ Petition stands dismissed, upholding the order passed by the Tribunal. No costs. Consequently, connected M.P.No.1 of 2015 is closed.
aeb

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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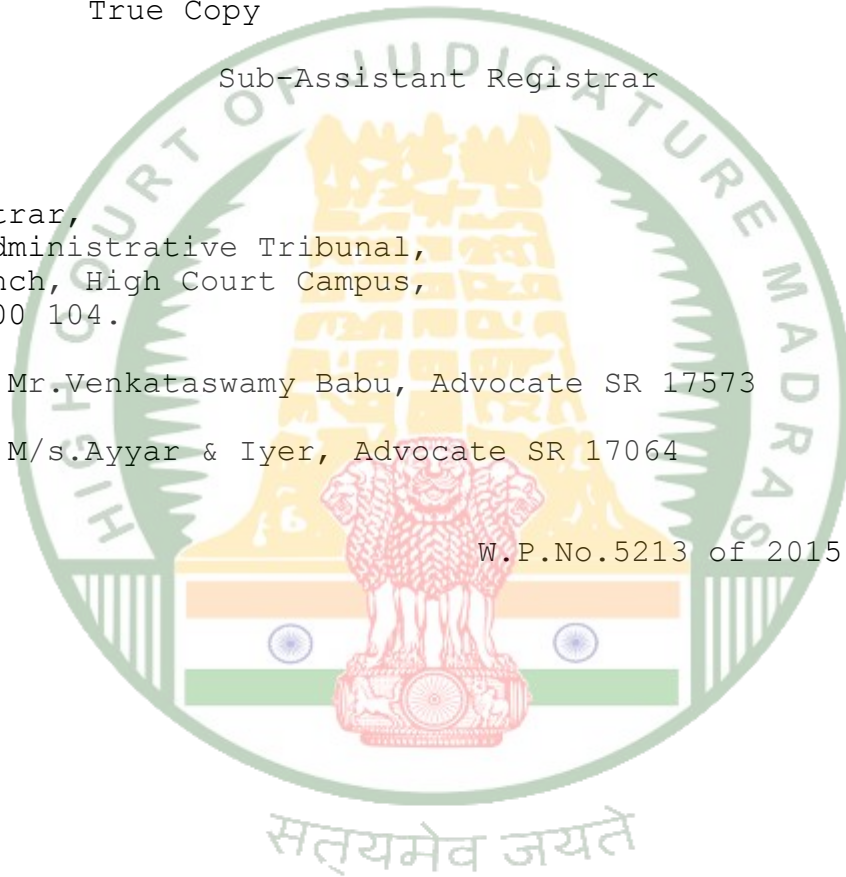
The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Campus,
Chennai 600 104.

+ 1 cc to Mr.Venkataswamy Babu, Advocate SR 17573

+ 1 cc to M/s.Ayyar & Iyer, Advocate SR 17064

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W.P.No.5213 of 2015



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