

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.ATHINATHAN

W.P.No.26848 of 2016

1. The General Manager,
Southern Railway,
Park Town, Chennai.

2. The Senior Divisional Personnel Officer,
Chennai Division, Southern Railway,
Park Town, Chennai. ..Petitioners

versus

1. S.Raj Kumar,
Section Controller,
Flat No.S-1, Ashok Kumar,
Nithyanatha Nagar, Irumpuliyur,
West Tambaram, Chennai-45.

2. The Registrar,
Central Administrative Tribunal,
Chennai. ..Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records, on the file of the 2nd respondent in O.A.No.310/00060/2015 dated 21.12.2015 and quash the same.

For Petitioners: Mr.V.Bhavani Subbaroyan
For Respondents: M/s. R. Pandian

ORDER
(Order of the Court was made by S.MANIKUMAR, J.)

Challenging the order, dated 27.11.2015, made in O.A.No.310/00060/2015, on the file of the Central Administrative Tribunal, Chennai, this Writ Petition is filed.

2. Short facts leading to the writ petition are as follows:

The 1st respondent, while he was working as Station Master in PB-2, with Grade Pay of Rs.4,200/-, was subjected to departmental selection for promotion, as Section Controller in the same pay band and grade pay and subsequently, promoted as Section Controller. He took independent charge of the post on 05.3.2010. According to the 1st respondent, the petitioners have failed to fix his pay in terms of Rule 1313 (FR22)(I)(a)(1) of the Indian Railway Establishment Code, according to which, the movement from the post of Station Master to the post of Section Controller is promotion. As absorption in the post of Section Controller was done, pursuant to a positive act of selection, as directed in Para 213 of the IREM, he should have been given the benefit of higher fixation of pay on promotion and shouldering higher responsibility. As the orders of the Tribunal, granting relief to the similarly placed persons, have been upheld by this Court and confirmed by the Hon'ble Supreme Court, 1st respondent sent various representations on 10.6.2010, 26.12.2012 and 13.11.2013, to the Senior Divisional Personnel Officer, Chennai Division, Southern Railway, Chennai, 2nd petitioner herein, requesting for higher fixation of pay on promotion, in terms of Railway Board's latest order. Since there was no response, he was constrained to file O.A.No.1145 of 2014, wherein, a direction was given by the Tribunal to direct the 2nd petitioner to consider and pass orders, on the above representations. Pursuant thereto, the 2nd petitioner, vide order, dated 22.09.2014, rejected the claim of the 1st respondent, for higher pay fixation. Aggrieved by the same, the 1st respondent has filed O.A.No.60 of 2015, to quash the said order, and for a consequential direction to the petitioners to fix his basic pay at Rs.16,020/- (PB 11820 + GP 4200/-).

3. Before the Central Administrative Tribunal, Chennai, the petitioners have contented that the 1st respondent, having undergone a selection process, was appointed to the post of Section Controller. In terms of Rule FR 22[III], the 1st respondent is not entitled for the benefit of fixation of pay, as the said rule clearly stipulates that the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance, if the post to which, the appointment is made in an identical scale of pay. Further, the movement of SM II to Section Controller is not a case for grant of the benefit of FR 1313 I(a)(1) once again. According to the petitioners, no similarly placed person has been granted the pay benefit of FR 22[1] [a][1].

4. The petitioners have contented that the 1st respondent had been appointed as Section Controller in the year 2003 and therefore, the cause of action arose only in the year 2004

itself and when the 1st respondent had not explained the cause for the delay not filed any application to condone the delay, it was the contention of the petitioners that the present application filed before the Tribunal, is barred by limitation. For the abovesaid reasons, the petitioners have prayed for dismissal of the application.

5. Considering the facts and circumstances of the case and materials on record, the Central Administrative Tribunal, Madras Bench, in O.A.No.310/00060/2015, passed an order, dated 21.12.2015, as follows:

"6. Learned counsel for the applicant submits that the case is fully covered by the order of this Tribunal in OA 717/2006 dated 22.6.2007 which was upheld by the Hon'ble High Court in WP 30151/2007 dated 25.2.2010 and by the Hon'ble Apex Court by order dated 30.8.2010 in SLP (Civil)...../2010 (CC 12847/2010). The Hon'ble Supreme Court while dismissing the SLP has held as follows:-

"In our view, the Tribunal had rightly interpreted Rule 1313 of the Railway Establishment Code and directed that the pay of the respondent, who had been promoted from the post of Station Master Grade-II to the post of Section Controller be refixed from the date he assumed higher responsibilities, i.e. 23.11.2003 and the High Court did not commit any error by refusing to interfere with the order of the Tribunal."

7. Learned counsel for the respondents, however, drew attention to the provision of the rules to plead that the benefit of Rule 1313 could only be given where the Railway Establishment is satisfied that the post to which an employee is promoted carried higher duties and responsibilities. He also submitted that as the orders of the Tribunal and the higher courts are not in accordance with statutory rules, his objection may be recorded.

8. I have carefully considered the facts of the case in terms of the settled law. It is clear that the applicant is squarely covered by the ratio of the aforesaid orders. It has been held in a similar case that the post of Section Controller carried higher functional responsibilities than the post of Station Master.

9. In view of the above, the OA is allowed. The impugned order dated 22.09.2014 is set aside. The respondents are directed to issue necessary orders refixing the pay of the applicant with effect from the date he assumed higher responsibility i.e., from the date of promotion within a period of two months from the date of receipt of a copy of this order."

6. Challenging the said order, the petitioners have filed this present writ petition, for the relief, stated supra.

7. It is not in dispute that in similar circumstance (R.Pandian v. Union of India), the order passed by the Central Administrative Tribunal in O.A.No.717 of 2006 has been confirmed by this Court in W.P.No.30151 of 2007, by an order dated 25.02.2010. Pursuant thereto, the Railways have preferred a Special Leave Petition and the Hon'ble Apex Court was pleased to pass a reasoned order in SLP (Civil) No.12847 of 2010 on 30.08.2010, dismissing the plea of the Railways, as hereunder:

"..... In our view, the Tribunal had rightly interpreted Rule 1313 of the Railway Establishment Code and directed that the pay of the respondent who had been promoted from the post of Station Master Gr II to the post of Section Controller be re-fixed from the date he assumed higher responsibilities, i.e., 23.11.2003 and the High Court did not commit any error by refusing to interfere with the order of the Tribunal. The Special Leave Petition is accordingly dismissed."

8. As the issue in question had already reached finality, we are of the considered view that the action of the writ petitioners, in filing this writ petition and trying to re-agitate the same issue, again and again, is not correct and we find no error in the order, dated 21.12.2015, passed by the Tribunal, directing the Railways to re-fix the pay of the 1st respondent, with effect from the date he assumed higher responsibility, ie., from the date of promotion.

9. In view of the above, the Writ Petition is dismissed and the petitioners are directed to comply with the order of the Tribunal, dated 21.12.2015, within a period of twelve weeks, from the date of receipt of a copy of this order, by extending all the monetary benefits, payable to the 1st respondent. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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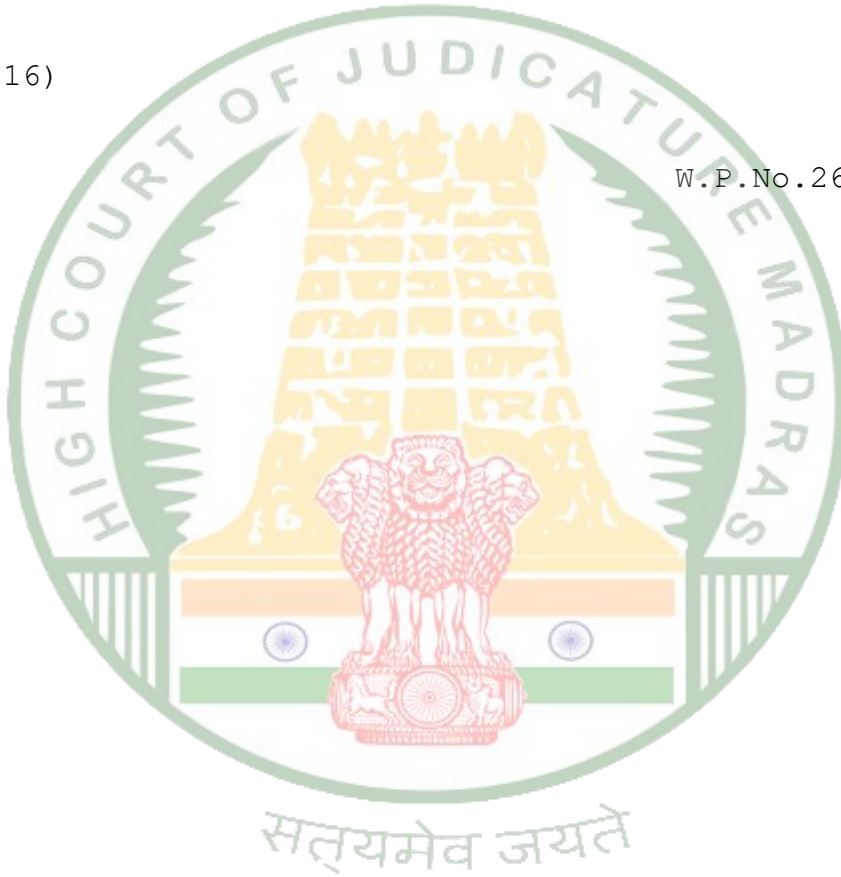
To

The Registrar,
Central Administrative Tribunal,
Chennai.

+1cc to M/s. V. Bhavani Subbarayan, Advocate, S.R.No.52929
+1cc to M/s. R. Pandian, Advocate, S.R.No.26848

NR (CO)
EU (4/11/2016)

W.P.No.26848 of 2016



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