

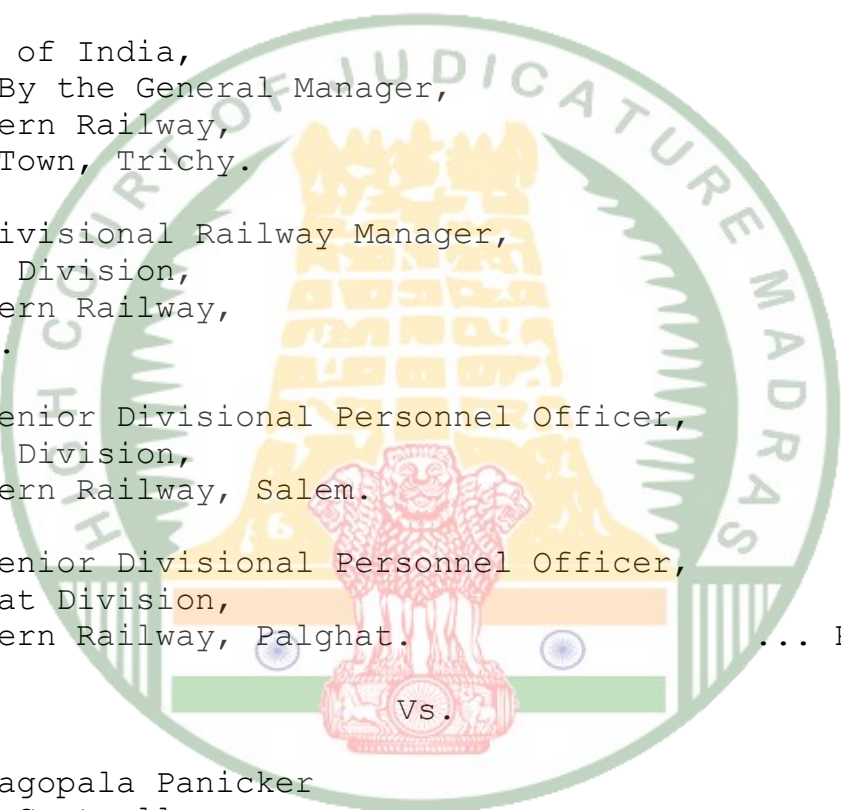
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2016

CORAM:

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

Writ Petition No.2748 of 2016

- 
1. Union of India,
rep. By the General Manager,
Southern Railway,
Park Town, Trichy.
2. The Divisional Railway Manager,
Salem Division,
Southern Railway,
Salem.
3. The Senior Divisional Personnel Officer,
Salem Division,
Southern Railway, Salem.
4. The Senior Divisional Personnel Officer,
Palghat Division,
Southern Railway, Palghat. Petitioners
- Vs.
1. N.Rajagopala Panicker
Chief Controller,
Salem Division,
Southern Railway, Salem.
2. The Registrar,
Central Administrative Tribunal,
Chennai. Respondents
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Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records on the file of the 2nd respondent in O.A.No.1261 of 2014, dated 28.08.2015 and quash the same.

For Petitioners: Mrs.V.Bhavani Subbaroyan

O R D E R

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

Challenging the order dated 28.08.2015 made in O.A.No.1261 of 2014 on the file of the Central Administrative Tribunal, Chennai and seeking to quash the same, this Writ Petition is filed.

2. Brief facts leading to the filing of this Writ Petition, are thus:

2.1. While the 1st respondent, viz. N.Rajagopala Panicker, was working as a Yard Master at Control Office, Palghat in the scale of Rs.5,500-9,000/-, he was selected for the post of Section Controller in the same pay scale, i.e. Rs.5,500-9,000/- by the duly constituted Committee and subjected to prescribed training. After successful completion of the training, he was absorbed as Section Controller initially from 02.01.2002 and later given effect from 13.07.2000 as per the order of the Central Administrative Tribunal, Ernakulam Bench. On the formation of Salem Division, he was absorbed at Salem Division and presently, he is working as Chief Controller at Salem Control Office.

2.2. According to the 1st respondent herein, since his elevation to the post of Section Controller, he was subjected to both written as well as viva-voce selection process by which, his basic pay should have been fixed at Rs.6,725/- with effect from the date of appointment as Section Controller i.e. from 13.07.2000 and at Rs.7,075/- with effect from 01.10.2000, which is the date of increment in his previous cadre. Despite his eligibility, the 1st respondent was not given the increment benefit and was kept at the same level of Rs.6,550/-. Hence, he made a representation to the petitioners herein seeking re-fixation of pay. Since the same was not fruitful, he approached the 2nd respondent/Tribunal seeking a direction to refix his salary on the basis of his selection to a higher responsible job.

3. In their detailed reply before the Tribunal, the petitioners/Southern Railway have stated that the pay band of yard Master and Section Controller are one and the same in the scale pay of Rs.5,500/- to Rs.9000/- and that the 1st respondent worked in the promotional post of Section Controller in the same scale of pay without any demur.

However, the 1st respondent was promoted as Deputy Chief Controller with effect from 03.01.2004, which post carried a different pay scale, Rs.6,500 - Rs.10,500 (5th Pay Commission) and subsequently, as Chief Controller in a much more higher scale of pay, Rs.7,450/- to Rs.11,500/- as per the 5th Pay Commission, wherein both were merged as Chief Controller in the pay scale of Rs.7,450/- to 11,500/- and replaced by a common pay band Rs.9,300/- to Rs.34,800/- with a Grade Pay of Rs.4,600/- on implementation of the 6th Pay Commission with effect from 01.01.2006. Not satisfied with the pay fixation, the 1st respondent initially filed O.A.No.669/2014 before the Central Administrative Tribunal, Madras Bench, wherein, the Tribunal, by its order dated 30.04.2014 directed the petitioners to dispose of the 1st respondent's representation dated 06.04.2013.

4. While complying with the said order of the Central Administrative Tribunal, the 1st petitioner vide order dated 14.07.2014 rejected the 1st respondent's representation. Relevant portion of the said order is usefully extracted hereunder.

"As per statutory rule framed by President of India in exercise of the powers conferred by proviso under Article 309 of the Constitution of India, the appointment of a Railway Servant shall not be deemed to involve the assumption of duties and responsibilities of greater importance if the post to which it is made is on the same scale of pay as the post which the Railway Servant holds on regular basis at the time of his promotion or appointment or on a scale of pay identical therewith - Rules 1313 FR 22(I) (a) (1) R-11. The Hon'ble Supreme Court in Union of India & Others -vs- Ashok Kumar Banerjee, vide order dated 13.05.1998, had also categorically held that granting second fixation benefit on the basis of the same FR would be an anomaly not obviously intended by the FR. Further, the Apex Court had held that for the applicability of FR 22(I) (a) (1) promotion should not only involve higher duties and responsibilities but also movement from a lower scale attached to a lower post to a higher scale attached to a higher post.

Ministry of Railways is competent to evaluate the relative level of duties and responsibilities of a post. Thereafter, the benefit of fixation under Rule 1313 FR 22(I)(a) (1) in case of appointment to identical scale can be made only as a specific exception by the Ministry of Railways by following due procedure and after consulting DoP&T/Ministry of Finance.

For the reasons stated above, you are not entitled for the benefit of fixation of pay for a second time in the same scale of pay and hence your claim for re-fixation of pay cannot be agreed to.

5. Aggrieved by the same, the 1st respondent filed O.A.No.1261 of 2014 seeking re-fixation of pay and the Tribunal, by an order dated 28.08.2015, held as under:

"6. In the result, following the earlier order, the impugned order dated 14.07.2014 is set aside and the respondents are directed to pass appropriate orders re-fixing the pay of the applicant at Rs.6,724/- with effect from 13.07.2000, the date on which he shouldered higher responsibility in the post of Section Controller and at Rs.7,075/- w.e.f. 01.10.2000, the date of his usual increment in the old post. Consequential benefits on such re-fixation are directed to be bestowed on the applicant. The above direction shall be complied with within a period of two months from the date of receipt of a copy of this order."

Challenging the said order passed by the Tribunal, the petitioners/Southern Railway have come up with the present Writ Petition.

6. The main contention of the learned counsel for the petitioners/Southern Railways is that the Tribunal failed to appreciate the fact that the 1st respondent opted for the post of Section Controller knowing very well that the pay band of Yard Master and Section Controller are one and the same. Also, she would contend that the Tribunal failed to see that the post of Section Controller is functionally not a higher post having great responsibilities and duties than that of a Yard Master.

7. It is not in dispute that in a similar circumstance (R.Pandian v. Union of India), the order passed by the Central Administrative Tribunal in O.A.No.717 of 2006 was confirmed by this Court in W.P.No.30151 of 2007, by an order dated 25.02.2010. Pursuant thereto, the Railways preferred a Special Leave Petition before the Hon'ble Apex Court and the 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 Management holding as under:

"..... 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 view that the action of the writ petitioners in trying to agitate the same issue again and again is not correct and we find no error in the order dated 28.08.2015 passed by the Tribunal directing the Railways to re-fix the pay of the 1st respondent/applicant with effect from 13.07.2000 and grant consequential benefits on such refixation.

9. As we confirm the order dated 28.08.2015 passed by the Tribunal, the Writ Petition stands dismissed and the petitioners are directed to comply with the order of the Tribunal 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/applicant. No costs. Consequently, connected W.M.P.No.2290 of 2016 is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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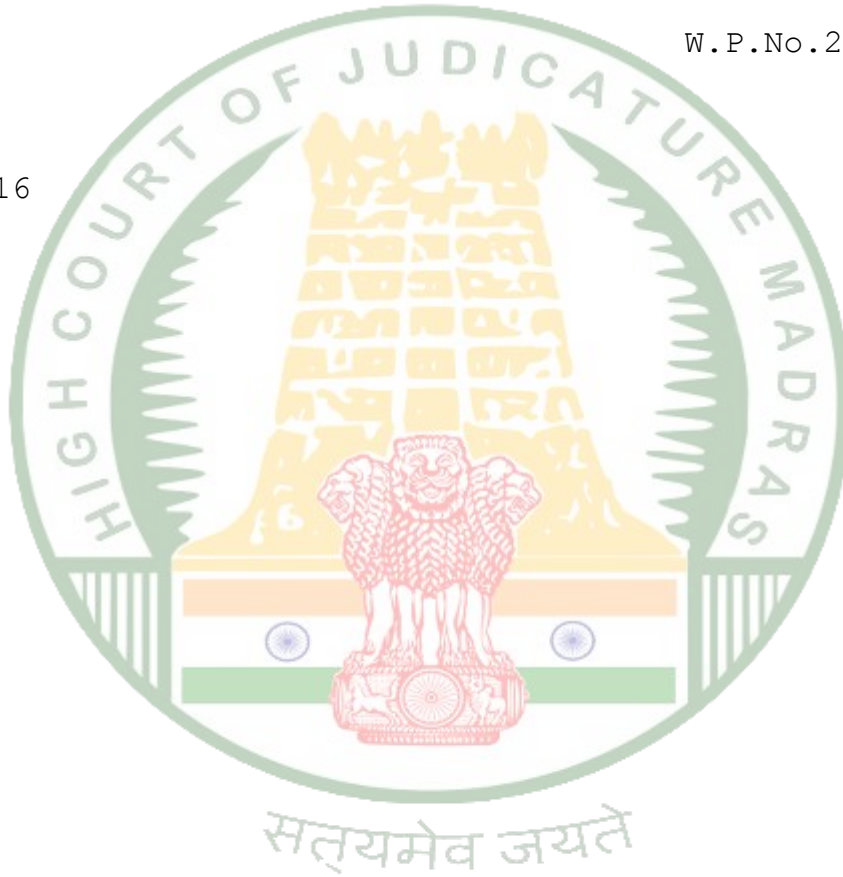
To:

The Registrar,
Central Administrative Tribunal,
Chennai.

+ 1 cc to Mr.V Bhavani Subbaroyan, Advocate SR.13939

W.P.No.2748 of 2016

VSN(CO)
EU 24.03.16



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