

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.7.2016
Delivered on : **08.08.2016**

CORAM :

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

W.P.No.26696 of 2012
& M.P.No.1 of 2012

1. Union of India
rep. by the Postmaster General
Southern Region (TN)
Madurai 625 001

2. Senior Superintendent of
Madurai Division
Madurai 625 002

.. Petitioners

Vs.

1. R.Subbian

2. The Registrar
Central Administrative Tribunal
City Civil Court building
Chennai 600 104

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, calling for the records of the second respondent Tribunal dated 09.4.2012 made in O.A.No.1126 of 2010 and quash the same.

For Petitioners : Mr.V.Balasubramaniam

For Respondents : Mr.R.Malaichamy for R1
R2 - Tribunal

ORDER

(Order of the Court was made by A.SELVAM, J.)

This Writ Petition is directed against the order dated 9.4.2012 passed in Original Application No.1126 of 2010 by the Central Administrative Tribunal, Madras Bench.

2. The first respondent herein, as applicant, has filed Original Application No.1126 of 2010 on the file of the Central Administrative Tribunal, Madras Bench, wherein the present writ petitioners have been shown as respondents.

3. It is averred in the application that the applicant has served 18 years in Indian Army and he has been discharged from service on 23.11.1982. He has been subsequently appointed as Postal Assistant during November 1983 and his service has been regularized in the said Cadre with effect from 1989. The applicant has completed 16 years of regular service in the said cadre and therefore he is eligible to get financial upgradation under TBOP Scheme, but the same has been

denied by virtue of the order dated 16.7.2010. Under such circumstances, present application has been filed.

4. On the side of the respondents, a counter has been filed by way of stating that the applicant has been appointed as Postal Assistant on 3.4.1989 and financial upgradation under TBOP Scheme has become due on 27.4.2005, on completion of 16 years of service. Under such circumstances, DPC Meeting has been conducted on 2.3.2006 for considering the request of the applicant. Since the applicant has been awarded with punishment of compulsory retirement from service with effect from 20.6.2006, the request of the applicant has been denied by virtue of passing the impugned order dated 16.7.2010 and therefore, the present application is liable to be dismissed.

5. On the basis of the rival contentions raised on either side, the Central Administrative Tribunal, Madras Bench has granted the reliefs sought in Original Application No.1126 of 2010 by way of passing the order dated 9.4.2012 and the same has been challenged under Article 226 of the Constitution of India, by way of filing the present Writ Petition.

6. The learned counsel appearing for the writ petitioners has contended to the effect that the first respondent/applicant has been appointed as Postal Assistant during November 1983 and even though he has completed 16 years of service and has been eligible for getting financial upgradation under TBOP Scheme, since the punishment of compulsory retirement has been passed against him with effect from 20.6.2006, the claim of the first respondent/applicant cannot be entertained. Under such circumstances, the impugned order dated 16.7.2010 has been passed, but the Central Administrative Tribunal, without considering the nature of the punishment imposed against the first respondent/applicant, has erroneously allowed Original Application No.1126 of 2010 and therefore, the order passed by the Central Administrative Tribunal, Madras Bench is liable to be set aside.

7. The learned counsel appearing for the first respondent/applicant has contended that as on 27.4.2005, the first respondent/applicant has completed 16 years of service. Under such circumstances, he is entitled to get financial upgradation under TBOP Scheme, but a punishment of compulsory retirement has been awarded only on 20.6.2006 and the same is not an embargo for granting financial upgradation and the Central Administrative Tribunal,

after considering the contentions put forth on either side, has rightly allowed the Original Application No.1126 of 2010 and therefore, the impugned order passed by the Central Administrative Tribunal is not liable to be set aside.

8. It is seen from the records that the first respondent/applicant has been appointed as Postal Assistant during November 1989 and he has completed 16 years of service on 27.4.2005. Further, it is seen from the records that if a person has completed 16 years of service, he is eligible for getting financial upgradation under TBOP Scheme.

9. It is also seen from the records that due to an embezzlement during the course of service, the first respondent/applicant has faced a departmental enquiry and ultimately a punishment of compulsory retirement has been given from 20.6.2006.

10. The only defence taken on the side of the writ petitioners is that since the punishment of compulsory retirement has been awarded to the first respondent/applicant, he is not entitled to claim the benefit under the said Scheme.

11. Further it is seen from the records that due retirement of the first respondent/applicant falls on 30.6.2016, but prior to 30.6.2006, punishment of compulsory retirement has been awarded on 20.6.2006 on the basis of gravity of offence alleged to have been committed by him. The punishment of compulsory retirement has been awarded only in respect of his remaining period of service.

12. As stated earlier, for getting financial upgradation under the said Scheme, one has to complete 16 years of service. In the instant case, the first respondent/applicant has completed 16 years of service as on 27.4.2005. Since he has completed 16 years of service as on 27.4.2005, certainly he is eligible for getting the benefit available under the TBOP Scheme. Simply because punishment of compulsory retirement has been awarded to the first respondent/applicant with regard to his remaining period of service, the benefit available to him under the said scheme cannot be denied.

13. The Central Administrative Tribunal, after considering the eligibility of the first respondent/applicant for getting financial upgradation under TBOP Scheme and also after coming to a conclusion that the punishment of compulsory retirement has been awarded only

in respect of the remaining period of service, has rightly allowed Original Application No.1126 of 2010. In view of the discussions made earlier, this Court has not found any error nor illegality in the order passed in Original Application No.1126 of 2010 and therefore, the relief sought in the writ petition cannot be granted.

In fine, this **Writ Petition is dismissed.** The order dated 9.4.2012 passed in Original Application No.1126 of 2010 by the Central Administrative Tribunal, Madras Bench is hereby confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(A.S., J.) (P.K.,J.)

08.08.2016

Index : Yes/No

ajr

To

The Registrar

Central Administrative Tribunal

City Civil Court building

Chennai - 600 104

A.SELVAM, J
and
P.KALAIYARASAN,J
ajr

Order in

W.P.No.26696 of 2012

08.08.2016