

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 01-11-2016

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

WRIT PETITION No.29929 of 2016
and
WMP No.25879 of 2016

- 1.Union of India
Rep. by the General Manager
Southern Railway, Park Town, Chennai
 - 2.The Senior Divisional Personnel Officer
Southern Railway, Madurai Division
Madurai
 - 3.The Senior Divisional Finance Manager
Southern Railway, Madurai Division
Madurai
- ... Petitioners

-vs-

- 1.P.Rajendran
 - 2.The Registrar
Central Administrative Tribunal
Madras Bench
- ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records on the file of the 2nd respondent in O.A.No.310/01914/2014 dated 18.01.2016 and quash the same.

For Petitioner : Ms.Bhavani Subbaroyan

For respondents: Mr.A.Abdul Ajees for R1

ORDER

(delivered by S.MANIKUMAR, J.)

Challenge in this writ petition is to an order made in O.A.No.310/01914/2014 dated 18.01.2016, by which, the Central Administrative Tribunal, Madras Bench, while quashing the impugned order of the second respondent in

No.U/P.524/I/WP/Engg Supervisors/ Fixation of Pay/Vol.II dated 21.11.2014 and the Memorandum in No.U/P.524/I/WP/Engg Supervisors/ Fixation of Pay/Vol.II dated 12.11.2013, directed the writ petitioners to protect the last pay drawn by the first respondent herein immediately before his repatriation from the ex-cadre post and pass fresh orders by fixing the pay of the first respondent and consequently revise the terminal benefits due to respondent No.1.

2. Short facts leading to the writ petition are that on 30.11.2013, the first respondent retired on superannuation as Section Engineer/ Permanent Way/Madurai (Sr.SE/PW/MDU) in Madurai Division of Southern Railway. While he was working as JE/PW, he was selected as Senior Section Engineer/PW/USFD (Ultra Sonic Flaw Detector) to an ex-cadre post in the scale of Rs.6500 - 10500, which was a level above his cadre post i.e. on the Section Engineer/Permanent Way. While working in the ex-cadre post, he was granted proforma promotion in his parent cadre from a later date. Few days before his superannuation, vide office order No.294/2013/WP dated 11.11.2013, he was repatriated to his parent cadre as Sr.SE/PW. Consequent to this, his basic pay was revised to Rs.22,070/- from Rs.23,530/- being the pay drawn by him before repatriation. Being aggrieved by the same, respondent No.1 has preferred original application No.310/01914/2014 dated 18.01.2016, before the Central Administrative Tribunal, Madras Bench, to quash the said order.

3. Before the Central Administrative Tribunal, Madras Bench, the first respondent contended that his appointment to the ex-cadre post was a positive act of selection, after a written test and viva-voce. Even though appointment as Sr.SE/PW/USFD was normally allowed only for a four year tenure period, the writ petitioners allowed the first respondent to stay in the ex-cadre post for 13 years, as an extraordinary measure, in the interest of administration and safety of running trains. As there was higher duties and responsibilities, in the said post, respondent No.1 was given higher pay. On the above submissions, respondent No.1 prayed to grant the relief sought for.

4. Defending the orders impugned therein, the writ petitioners, contended that respondent No.1, cannot be granted the basic pay of Rs.23,530/-, paid in the ex-cadre post in terms of Railway Board's letter No.F(E)III/2007/PN1/4 dated 9.6.2011. They also contended that as per the Railway Board Establishment Circular No.166/1998, the employees working in ex-cadre post and due for retirement have to be brought back to the cadre within six months from the date of attaining superannuation. Accordingly, vide office order dated 11.11.2013, respondent No.1, was repatriated to the parent cadre and that his pay was revised downwards in the substantial post held by him in the cadre.

5. Per contra, before the Central Administrative Tribunal, Madras bench, respondent No.1, has also relied on a decision of the Central Administrative Tribunal, Ernakulam Bench in O.A.Nos.596 and 626 of 2011 and contended that though the applicant therein, was repatriated to the substantive post, namely Senior Section Engineer/Permanent Way/USFD, pay drawn by the appellant therein, in the ex-cadre post, has been protected and based on the order of the CAT, Ernakulam Bench in O.A.Nos.596 and 626 of 2011, prayed for similar directions.

6. On the contra, by placing reliance on a decision of this court dated 27.7.2005 made in W.P.No.13721 of 2001, writ petitioners have sought to sustain the action in revising the pay to a lower basic pay, in the post of Section Engineer/Permanent Way.

7. Adverting to the rival submissions, and the material on record, vide order dated 18.01.2016, in O.A.No.310/01914/2014, the Central Administrative Tribunal, Madras Bench, at paragraphs 8 to 10, ordered as hereunder:

"8. On the other hand it is seen that the order of the Ernakulam Bench, CAT is with regard to a case where both the facts as well as the relief claimed were similar. The following observations of the Ernakulam Bench, CAT while allowing the relevant OAs are significant:

"9. As per order dated 11/07/1991 (Annexure A-13) in OA 626/11 and Annexure A-9 in OA 596/11 the tenure of PWI/Grade-I/USFD, an ex-cadre post, was normally for a maximum period of 5 years. The respondents continued the applicants on the ex-cadre posts for about 16 to 20 years as an extra ordinary measure, in the interest of administration, without exercising their option to send them back at the end of the normal maximum tenure. The applicants were selected through written test and viva voce test and promoted to the post of PWI/Grade-I. The higher grade of pay in the ex-cadre post was earned by the applicants on merit. In the case of Inderpal Yadav Vs. Union of India (2005) 11 SCC 301, Bhadel Rai Vs. Union of India, (2005) 11 SCC 298 and Badri Prasad Vs. Union of India (2005) 11 SCC 304, the Apex Court enunciated the principle that when an individual is allowed to work in a higher post for a substantial period, on his repatriation to the parent cadre, his pay should be protected. Relying on the law declared by the Apex Court, this Tribunal allowed the O.A.No.643/2007 as under:

"21. Thus, in the instant case also, the applicant having working for 20 years continuously in the higher pay scale in the ex-cadre post, on his being

repatriation to his parent cadre, he becomes entitled to have his pay protected. Contention by the counsel for the respondents that the decision relied upon by the applicant cannot be of any help as the same did not take into account the rule position in regard to fixation of pay on repatriation does not assist the respondents, since, such a rule would apply only when the repatriation is within a short period (In fact, in their order No.E(NG) 1/2004/PM1/19 dated 27.08.2004 the Railway Board has fixed the tenure for ex-cadre post not to exceed 5 years). In the instant case, the decision by the Apex Court squarely applies as the individual has been functioning in the higher post for 20 years.

22. In view of the above, the OA succeeds. It is declared that while being repatriated to the parent cadre, the applicant is entitled to have his pay drawn in the ex-cadre post protected. This protection would be notional from November, 2003 when he was actually repatriated and would be actual from October, 2006, which is one year prior to the filing of this O.A. Respondents are directed re-fix the pay of the applicant accordingly and pay the arrears of pay and allowances to the applicant. The order shall be complied with, within a period of 6 months from the date of communication of this order. No costs."

10. In O.A.No.121/2006 also, this Tribunal had ordered protection of the last pay drawn by the applicant therein. The major part of the career of the applicants was spent on the ex-cadre posts. Though they can be sent back to the parent cadre, as per the law laid down by the Apex Court, they cannot be deprived of the benefit of higher pay earned by them through long service after passing the qualifying tests.

11. The seniors of the applicants either opted not to participate in the selection process for the ex-cadre post of they could not get selected. The general principle of senior getting higher pay than junior will have no application in the instant cases because the grade of pay of the applicants is

justified on account of their merit based selection and long service in the ex-cadre posts in the interest of administration.

12. Following the ratio of the judgments of the Apex Court mentioned above and the orders of this Tribunal in O.A.No.643/2007 and 121/2006, we allow these OAs.

Accordingly, it is ordered as under:

13. The impugned orders to the extent they relate to the applicants are set aside. The respondents are directed to protect the last pay drawn by the applicants as Senior Section Engineer/P.Way/USFD in the Pay Band of Rs.9300/34800 plus Grade Pay of Rs.4800/- on being repatriated to the cadre posts in terms of Office Order No.68/2011/WP dated 23.06.2011 and further directed to grant consequential benefits thereof within a period of 2 months from the date of receipt of a copy of this order. No order as to costs."

9. In view of the relief granted to similarly placed employees in the aforesaid orders, I have no hesitation in holding that the applicant is entitled to the relief sought by him. Accordingly, the impugned order No.U/P.524/I/2P/Engg Supervisors/Fixation of Pay/Vol.II dated 21.11.2014 of the Divisional Personnel Officer (Annexure-A1) of the 2nd respondent and the Memorandum No.U/P.524/I/WP/Engg Supervisors/Fixation of Pay/Vol.II dated 12.11.2013 (Annexure A-2) of the Divisional Personnel Officer are quashed and asset aside. The respondents are directed to protect the last pay drawn by the applicant immediately before his repatriation from the ex-cadre post and pass fresh orders of pay fixation within a period of six weeks from the date of receipt of a copy of this order. The respondents shall also revise the terminal benefits due to the applicant on the basis of such revised pay fixation and settle his retirement claims within this period.

10. The OA is allowed as above without any order as to costs.

8. Though, Ms.Bhavani Subbaroyan, learned counsel for the writ petitioners, reiterated the very same submissions and sought for reversal of the order made in O.A.No.310/01914/2014 dated 18.01.2016 of the Central Administrative Tribunal, Madras Bench, during the course of hearing, when we posed a question to the learned counsel as to whether the order of the Central Administrative Tribunal, Ernakulam Bench in O.A.Nos.596 and 626 of 2011, was challenged in the High Court,

the answer was in the negative. She further submitted that it is the first respondent who volunteered for the ex-cadre post, and once he is repatriated, his pay has to be fixed on the post held by him.

9. At this juncture, Mr.A.Abdul Ajees, learned counsel for the first respondent, submitted that the abovesaid order has been implemented. On the said aspect, submission of the learned counsel for the first respondent is duly acknowledged by the learned counsel for the writ petitioners.

10. Contention of the first respondent that his appointment to ex-cadre post was a positive act of selection after a written test and viva voce, has not been seriously disputed by the writ petitioners. Indisputably, respondent No.1, has been functioning in the ex-cadre post, for nearly 13 years on the higher basic pay of Rs.23,530/-.

11. Though learned counsel for the writ petitioners submitted that the 1st respondent had volunteered for the post of Section Engineer/Permanent Way/USFT, an ex-cadre post with a higher scale and that the same would not confer as right for retention, either in the same cadre or to the benefit of higher basic pay, relying on the Railway Board Establishment Circular No.166/1998, which states that employees working in ex-cadre post and due for retirement has to be brought back to a cadre post within six months prior to retirement, this court is not inclined to accept the said contention, for the reason that the first respondent had been continuously working in the ex-cadre post, higher duties and responsibilities for more than 13 years and he cannot be deprived of the higher pay, when repatriated to the parent department. Once there is a process of positive acts of selection to a post, either for appointment to an ex-cadre or promotion, involving higher duties and responsibilities and on the facts and circumstances of the case, when the respondent No.1 has drawn higher basic pay in the post of Section Engineer/Permanent Way/Madurai, for more than 13 years, the same requires protection. Reduction of pay would affect his salary, pension and retiral benefits.

12. Yet another aspect to be considered is that when the Railway employees similarly situate have been given protection, the same yardstick has to be applied to others also.

13. In the light of the above discussion and decision, we are not inclined to interfere with the impugned order. Writ petition is dismissed. Consequent to the same, writ petitioners are directed to restore the basic pay of the first respondent at Rs.25,530/- and consequently, revise the retiral and pensionary benefits. The said exercise has to be done within a period of three weeks from the date of receipt of a copy of this order. No costs.

Inasmuch as this court has confirmed the order made in O.A.No.310/01914/2014 dated 18.01.2016, Ms.Bhavani Subbaroyan, learned counsel for the writ petitioners, is directed to communicate the order of this court. Writ petitioners shall act as per the directions of the Tribunal and need not wait for the copy of the order of this court.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

Asr

To

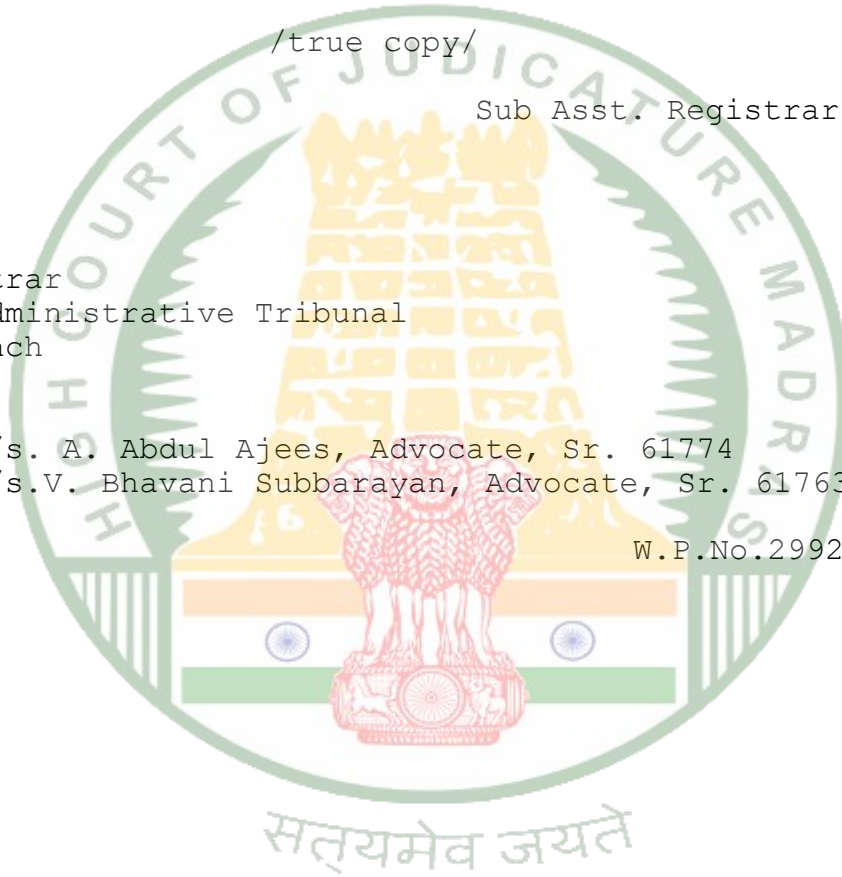
The Registrar
Central Administrative Tribunal
Madras Bench

1 cc to M/s. A. Abdul Ajees, Advocate, Sr. 61774

1 cc to M/s.V. Bhavani Subbarayan, Advocate, Sr. 61763

W.P.No.29929 of 2016

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