

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.AUTHINATHAN

W.P.No.30170 of 2016
W.M.P.No.26148 of 2016

1. Union of India,
rep. By the General Manager,
Southern Railway,
Park Town, Chennai-600 003

2. The Divisional Railway Manager,
Madurai Division, Southern Railway,
Madurai.

3. The Senior Divisional Personnel Officer,
Madurai Division,
Southern Railway, Madurai.

.. Petitioners

versus

1. Y.Yesudoss,
Chief Controller,
O/o.Chief Controller,
Madurai Division,
Southern Railway, Madurai.

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.310/01270/2014, dated 21.07.2015 and quash the same.

For Petitioners : Mr.A.P.Srinivas
For Respondent No.1 : Mr.R.Pandian

ORDER

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

Challenging the order, dated 21.07.2015, made in O.A.No.310/01270/2014, 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 joined Railway Service as Trains Clerk on 16.1.1980 and was promoted as Chief Trains Clerk in the pay scale of Rs.5500-9000 on 5.3.1991. While working as such, he was selected for the post of Section Controller, which post also carries the pay scale of Rs.5500-9000, by a duly constituted Selection Committee and after undergoing the prescribed training which consists of both theory and job training followed by a suitability test for absorption as Section Controller by a Committee, the 1st respondent was duly promoted as Section Controller and he took charge on 22.12.2000. It was the grievance of the 1st respondent that on promotion, his pay should have been fixed at Rs.6725/-, from the date of his appointment viz., 22.12.2000 and Rs.7075/- with effect from 1.3.2001 as provided in Rule 1313(FR 2(1)(a)(1)) of the Indian Railway Establishment Code. However, his pay was kept at Rs.6550/- without any change. According to the applicant, his movement from the post of Chief Trains Clerk to the post of Section Controller is a promotion, in terms of Rule 211(1) of the Indian Railway Establishment Manual and as such he should have been given the benefit of higher fixation of pay. 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, he has made a representation to the Divisional Railway Manager, Madurai Division, Southern Railway, Madurai, 2nd petitioner herein, for fixation of higher pay. Since there was no response, he was constrained to file O.A.No.668 of 2014, wherein, a direction was given by the Tribunal to direct the 2nd petitioner to consider and pass orders, on the above representation. Pursuant thereto, the General Manager, Southern Railway, Chennai, 1st petitioner herein, vide order, dated 14.07.2014, rejected the claim of the 1st respondent, for higher pay fixation. Aggrieved by the same, the 1st respondent has filed O.A.No.1270 of 2014, to quash the said order, and for a consequential direction to refix his basic pay at Rs.6,725/-, with effect from 22.12.2000, i.e., from the date of taking over higher responsibility and at Rs.7075/- w.e.f. 1.3.2001 i.e from the date of his usual increment in the old post and for the consequential refixation in view of cadre restructuring and implementation of VI CPC recommendations, as per rules.

3. Before the Central Administrative Tribunal, Chennai, the petitioners have contented that the 1st respondent, who was working as a Chief Trains Clerks, which is the highest scale of his cadre of Train Clerk, was selected to the lowest scale of the cadre of Section Controller and therefore, he is not entitled for second fixation, while moving to the same scale of pay. Placing reliance on a decision rendered by the Apex Court in Union of India and Others v. Ashok Kumar Banerjee reported in 1998 (5) SCC 242, the petitioners have contended that 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 lower post to a higher scale attached to a higher post.

4. Further, according to the petitioners, the claim of the 1st respondent for higher fixation of pay for his appointment in the same scale of pay is not permissible, inasmuch as the claim involves second fixation and invoking the provisions of Paras 211(1) and 213 of the IREM, Vol.I by the 1st respondent, is not correct. It is also pointed out that the Railway Board's letter dated 24.5.1999 has clearly mentioned the categories of posts, for which, the movement from one post to another in the scale of pay, would attract fixation of pay.

5. The petitioners have further submitted that the 1st respondent cannot compare himself with that of the applicant in O.A.No.717 of 2006, who was working as Station Master and while promoted to the post of Section Controller, he has to control over many Station Masters, working in a Section of the Railway, whereas in the case of the 1st respondent, it is not so and he was working in a supervisory post and hence, the order in O.A.No.717 of 2006, does not support his case. For the above reasons, they prayed for dismissal of the application filed before the Central Administrative Tribunal.

6. Considering the facts and circumstances of the case and materials on record, the Central Administrative Tribunal, Madras Bench, in O.A.No.310/01270/2014, passed an order, dated 21.07.2015, as follows:

"6. Admittedly, the post of Chief Trains Clerk and the post of Section Controller carry the same scale of pay of Rs.5500-9000. The applicant's selection/promotion to the post of Section Controller was done by a duly constituted Selection Committee consisting of Administrative Grade Officers. His promotion to the post in question was subjected to positive act of selection both written test as well as viva voce. Before he was appointed to the substantive post of Section Controller, he was subjected to class

room training at Zonal Training Centre, Tiruchirappalli and also on -the-job training at Marshalling yard and at Control Office. He took charge of post of higher duties and responsibilities on 22.12.2000. His movement from the post Chief Trains Clerk to the post of Section Controller is a promotion in terms of Para 211(1) of the Indian Railway Establishment Manual as directed in Para 213 of the said Manual requires that he should have been given the benefit of higher fixation of pay. His representation to fix his pay at Rs.6725/- as provided under Rule 1313 (FR 22(1)(a)(1) of the Indian Railway Establishment Code was turned down. The stand of the respondents is that the claim of the applicant for higher fixation of pay on appointment in the same scale of pay is not permissible in as much as the claim involves second fixation. Further, the post in which the applicant was working at the time of his selection to the post of Section Controller was not included in the Railway Board's letter dated 24.5.1999 for second fixation and the case of the applicant is covered by the orders of the Hon'ble Supreme Court in the case of Union of India and Ors. Vs. Ashok Kumar Banerjee. The respondents have further contended that the applicant cannot quote the orders passed by the Tribunal in OA 717 of 2006 wherein the applicant was a Station Master Gr.II and he was promoted to the post of Section Controller which post controlled many Station Masters working in a Section.

7. Having considered the facts and circumstances of the case and also on perusal of the orders of the Tribunal dated 22.6.2007 in OA 717 of 2006, we are of the view that the issue has already been considered in detail by the Tribunal and decided in favour of the applicant therein. Subsequently, the said finding was upheld by the Hon'ble High Court and that of Hon'ble Supreme Court. A finality has been reached in the issue. The applicant is also similarly placed person like that of the applicant in the OA 717 of 2006. The only difference is that the applicant in OA 717 of 2006 was promoted to the post of Section Controller from Station Master Gr.II whereas in the present OA, the applicant was promoted to the post in question from Senior Train Clerk. From the absorption order dated 22.12.2000, it is seen that the absorption will take effect only from the date of assuming higher responsibility as Section Controller. As it is very clear from the said order that on elevation to the post of Section Controller, the applicant has to perform higher duties and

responsibilities. The promotion/absorption of the applicant to that post after subjecting him to a process of selection which consists of both theory and on the job training followed by a suitability test.

8. In view of the above discussion, we are of the considered view that the orders of the Tribunal dated 22.6.2007 in OA 717 of 2006 squarely applicable to the applicant herein. As already stated that the said order has been upheld by the Hon'ble High Court and Hon'ble Apex Court, the applicant herein is entitled for higher pay fixation.

9. In the result, the impugned order dated 14.7.2014 is set aside and the respondents are directed to pass appropriate orders refixing the pay of the applicant at Rs.6725/- with effect from 22.12.2000, the date on which he shouldered higher responsibility in the post of Section Controller and at Rs.7075/- w.e.f. 1.3.2001, i.e from the date of his usual increment in the old post. Consequential benefits on such refixation are directed to be bestowed on the applicant. The above direction shall be completed within a period of two months from the date of receipt of a copy of this order.

10. The OA is allowed in the above terms. In the circumstances, there shall be no order as to costs."

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

8. It is not in dispute that in a similar circumstances (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, 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."

9. Distinguish the judgment of the Hon'ble Apex Court in Ashok Kumar Banerjee's case (cited supra), considered in R.Pandian's case (cited supra), Mr.A.P.Srinivas, learned counsel for the petitioners submitted that when at Paragraph 8 of the judgment, the Hon'ble Apex Court held that, "For the applicability of the FR 22(1)(a)(i), it is not merely sufficient that the officer gets a promotion from one post to another, involving higher duties and responsibilities, but another condition must also be satisfied, namely, that he must be moving from a lower scale, attached to the lower post to a higher scale attached to a higher post." which in the case on hand, according to him, is absent and therefore, absorption of the 1st respondent, as section controller in the same scale of Rs.5,500-9,000/-, cannot be treated as promotion, this Court is not inclined to countenance the said submission, for the reason that there is a clear selection to the post of Section Controller, prescribing written examination and viva-voce. Thereafter, the candidate selected has to undergo a prescribed training, which consists of both theory and job training, followed by the suitability tests for absorption, as Section Controller, by the Committee. We are of the view that if it is a case of mere absorption from one post to another, there is no need for a prescription for a detailed procedure in conducting examination, viva-voce, followed by a training, a class room training at Zonal Class, Trichy and job training at the control office and suitability test. In the process of selection to the subject post, one may have to consider, as to whether, the inter-se merits, are considered and as to whether, there is any selection process, involved, if it is on mere seniority.

10. Admittedly, the post of Section Officer has higher responsibilities and duties and therefore, in our considered view, it cannot be construed as mere absorption, with same scale of pay. As rightly observed by the Tribunal, when the 1st respondent has been shouldered with higher responsibilities and duties, in the post of Section Controller, the pay ought to have been refixed from the basic pay of Rs.6,725/- to the next level at Rs.7,075/-, with effect from 01.03.2001, ie., from the date of usual increment, in the old post and for the consequential refixation, in view of the cadre of re-structuring and implementation of VI CPC recommendations, as per the rules. Going through the material on record, we are of the considered view that the issue in question had already reached finality and hence, 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 therefore, we find no error in the order, dated 21.07.2015, passed by the Tribunal, directing the Railways to re-fix the pay of the 1st respondent, with effect from 13.07.2000 and to grant all consequential benefits, on such refixation.

11. In the light of the above, the Writ Petition is dismissed and the petitioners are directed to comply with the order of the Tribunal, dated 21.07.2015, 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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

skm

To

The Registrar,
Central Administrative Tribunal,
Chennai.

+1 cc to M/s.R.Pandian Advocate sr 53008
+1 cc to M/s.A.P.Srinivas Advocate sr 53301

W.P.No.30170 of 2016

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