

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2016

CORAM:

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

W.P.No.34340 of 2016

1. The General Manager,
Southern Railway,
Park Town, Chennai.3

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

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

.. Petitioners

versus

1. S.Sornalakshmi,
Chief Controller,
O/o. Chief Controller,
Madurai Division,
Southern Railway, Madurai.

2. The Registrar,
Central Administrative Tribunal,
Madras Bench, 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.310/1367/2014, dated 28.01.2016 and quash the same.

For Petitioners : Mr.A.P.Srinivas

ORDER

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

Challenging the order, dated 28.01.2016, made in O.A.No.310/1367/2014, 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, while was working as Traffic Inspector/FOIS (Ex-cadre post of Station Master) in Pay Band-2 with Grade Pay Rs.4,600/- on MACP (Substantive GP 4200), was subjected to a departmental selection for promotion as Section Controller in the same scale PB and GP and she was subsequently promoted in the said capacity. According to her, the petitioners have failed to fix his pay in terms of Rule 1313 (FR22) (I) (a) (1) of the Indian Railway Establishment Code. It is also her submission that 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, she should have been given the benefit of higher fixation of pay on promotion. 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 05.03.2012 and 05.04.2013, to the Senior Divisional Personnel Officer, Madurai Division, Southern Railway, Madurai, 2nd petitioner herein, requesting for higher fixation of pay on promotion, in terms of the Railway Board's latest order. Since there was no response, she was constrained to file O.A.No.897 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 04.08.2014, rejected the claim of the 1st respondent, for higher pay fixation. Aggrieved by the same, the 1st respondent has filed O.A.No.1367 of 2014, to quash the said order, and prayed for a consequential direction to the petitioners to fix her basic pay at Rs.19,700/- (PB + GP) from 03.11.2011 and thereafter, to effect consequential re-fixation of pay.

3. Before the Central Administrative Tribunal, Chennai, the petitioners have contented that the 1st respondent was in supervisory cadre of Station Master, when she opted for the post of Section Controller, which is the lowest scale in that cadre and therefore, she is not entitled for fixation of pay, as claimed by her. The Railway Board, while issuing the letter, dated 24.05.1999, has analysed the duties and responsibilities for various posts, for which, promotional opportunities are available and after due consultations, listed the categories, eligible for the 2nd fixation of pay, in the same scale of pay, when movement from one post to another is carried out. The post of the 1st respondent is not included in the said list of categories of posts and hence, she is not entitled for fixation of pay, as claimed by her and it is in accordance with the letter issued by the Railway Board. For the abovesaid reasons, the petitioners have prayed for dismissal of the application.

4. Considering the facts and circumstances of the case and materials on record, the Central Administrative Tribunal, Madras Bench, in O.A.No.310/1367/2014, passed an order, dated 28.01.2016, 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.

8. I have carefully considered the facts of the case in terms of the settled law. The Tribunal had dealt with similar issues in various OAs directing the respondents to refix the pay of the applicants therein at their respective dates and setting aside the impugned orders therein. 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. The respondents' contention that the fact that the applicant was not working as Station Master but as Traffic Inspector would make her ineligible to invoke the ratio of the order in OA 717/2006 is not valid. The respondents admit in para 8 of the reply statement that the 'applicant was moved from the same scale of her substantive cadre of Station Master to the lowest scale of Section Controller.....". Hence, she cannot be discriminated against vis-a-vis other Station Masters promoted Section Controllers. The rights of an employee flowing from her substantive status cannot be taken away for the only reason that she was working on an excadre post at the relevant time. Her appointment as Section Controller had nothing to do with her excadre

occupation and her eligibility was determined only with reference to her substantive post.

10. It is also seen that Annexure A2 appointment order status inter alia as follows:

"The above promotion is ordered subject to the following conditions:-

(1) The promotion will take effect from the date of assuming higher responsibility. The date of taking up the independent duty should be advised to this office immediately.

The use of the terms 'promotion' and 'assuming higher responsibility' puts the issue beyond a shadow of doubt and therefore, the ratio of OA 717/2006 must be held to be applicable to the instant case.

5. In view of the above, the OA is allowed. The impugned order dated 04.08.2014 is set aside. The respondents are directed to issue necessary orders refixing the pay of the applicant with effect from the date she 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 28.01.2016, passed by the Tribunal, directing the Railways to re-fix the pay of the 1st

respondent, with effect from the date she 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 28.01.2016, 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/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

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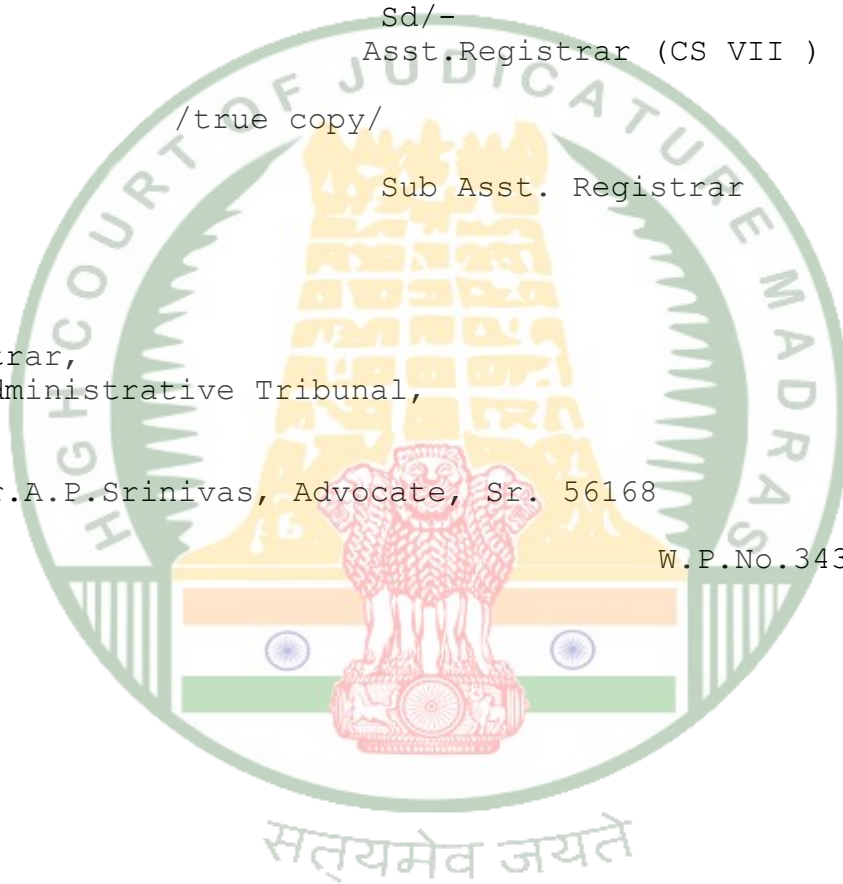
The Registrar,
Central Administrative Tribunal,
Chennai.

1 cc to Mr.A.P.Srinivas, Advocate, Sr. 56168

W.P.No.34340 of 2016

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