

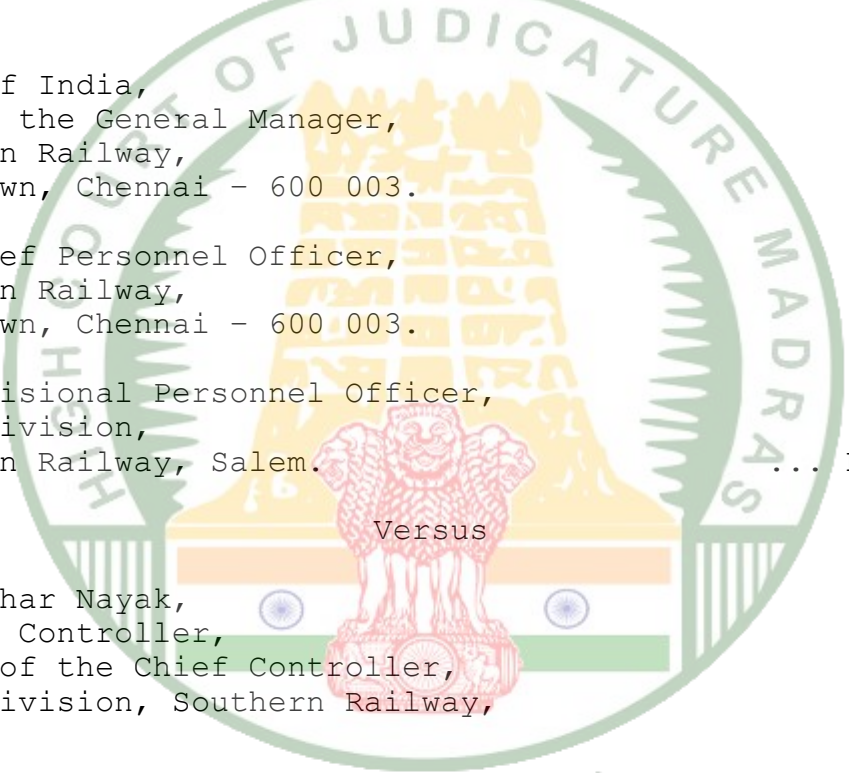
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM:

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

W.P.No.41586 of 2016
and
W.M.P.No.35597 of 2016

- 
1. Union of India,
Rep. by the General Manager,
Southern Railway,
Park Town, Chennai - 600 003.
2. The Chief Personnel Officer,
Southern Railway,
Park Town, Chennai - 600 003.
3. The Divisional Personnel Officer,
Salem Division,
Southern Railway, Salem. ... Petitioners
- Versus
1. Chakradhar Nayak,
Section Controller,
Office of the Chief Controller,
Salem Division, Southern Railway,
Salem.
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.310/00136/2015, dated 17.02.2016 and quash the same.

For Petitioners : M/s.V.Bhavani Subbaroyan

ORDER

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

Challenging the order, dated 17.02.2016, made in O.A.No.310/00136/2015, on the file of the Central Administrative Tribunal, Madras Bench, Chennai, this Writ Petition is filed.

2. Short facts leading to the writ petition are as follows:

The 1st respondent, while working as Station Master in Pay Band-2 with Grade Pay Rs.4,600/-, was subjected to departmental selection for promotion as Section Controller in the same scale PB and GP and he was subsequently promoted in the said capacity. According to him, the petitioners have failed to fix his pay in terms of Rule 1313 (FR22)(I)(a)(1) of the Indian Railway Establishment Code. As absorption in the post of Section Controller was done pursuant to a positive act of selection, he should have been given the benefit of higher fixation of pay. The 1st respondent made a representation dated 12.08.2012 to the third petitioner requesting to grant higher fixation of pay on promotion. His claim was rejected by order dated 18.09.2012 stating that both the lower post, as well as the promotional post were in the same Grade Pay. It is also his submission that movement from the post of Station Master to the post of Section Controller is promotion. As the orders of the Tribunal, granting relief to the similarly placed persons, have been upheld by this Court and confirmed by Hon'ble Supreme Court, 1st respondent sent a representation on 28.10.2013, to the Chief Personnel Officer, Southern Railway, Park Town, Chennai, 2nd petitioner herein, a copy of which has been marked to the Divisional Personnel Officer, Salem Division, Southern Railway, Salem, 3rd petitioner herein, requesting for higher fixation of pay on promotion, in terms of the Railway Board's latest order. The 3rd petitioner rejected his claim. Aggrieved by the said order, 1st respondent was constrained to file O.A.No.1016 of 2014, wherein, a direction was issued by the Tribunal, directing the 2nd petitioner to consider and pass orders, on the above representation. Pursuant thereto, the 2nd petitioner, vide order, dated 17.12.2014, rejected the claim of the 1st respondent, for higher pay fixation. Aggrieved by the same, the 1st respondent has filed O.A.No.310/00136/2015, to quash the said order, and prayed for a consequential direction to the petitioners to fix his basic pay at Rs.16,020/- (PB + GP) from 06.07.2012.

3. Before the Central Administrative Tribunal, Chennai, the petitioners have contended that movement from Station Master Grade-III to Section Controller are in identical grade pay, and it does not figure in the list of such movements enumerated in

the Board's letter dated 12.09.2013 for the purpose of granting the benefit of higher pay fixation. The petitioners have also relied on a letter of the Railway Board dated 16.05.2007, wherein, it was stated that appointment of Station Master-II, in Scale Rs.5500-9000, as Section Controller, in identical scale, cannot be treated as a case of assumption of duties and responsibilities of greater importance. By referring to the letter of Railway Board dated 16.05.2007, it was also contended that pay cannot be fixed under Rule 1313 (FR 22) (1) (a) (1) R-II, in all cases of selection/appointment, and the same can be fixed only according to the relevant rules in force. For the abovesaid reasons, the petitioners have prayed for dismissal of the Original Application.

4. Considering the facts and circumstances of the case and materials on record, the Central Administrative Tribunal, Madras Bench, in O.A.No.310/00136/2015, dated 17.02.2016, ordered 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."

It is also submitted that similar issue had been dealt with by this Tribunal in O.A.No.135 of 2015 and the same was allowed by order dated 21.12.2015.

7. Learned counsel for the respondents on the other hand, draws 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. However, he agrees that it is a covered matter and it could be disposed of on the same lines.

8. I have carefully considered the facts of the case in terms of the settled law. It is clear that the applicant is squarely covered by the ratio of the aforesaid orders. As it has been held in similar cases that the post of Section Controller carried higher functional responsibilities than the post of Station Master, the OA succeeds. The impugned order dated 17.12.2014 of the 2nd respondent is set aside. The respondents are directed to issue necessary orders refixing the pay of the applicant with effect from the date he 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. No order as to costs."

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

6. 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, 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."

7. 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, we find no error in the order, dated 17.02.2016, passed by the Tribunal, directing the Railways to re-fix the pay of the 1st respondent, with effect from the date he assumed higher responsibility, ie., from the date of promotion.

8. In view of the above, the Writ Petition is dismissed and the petitioners are directed to comply with the order of the Tribunal, dated 17.02.2016, 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/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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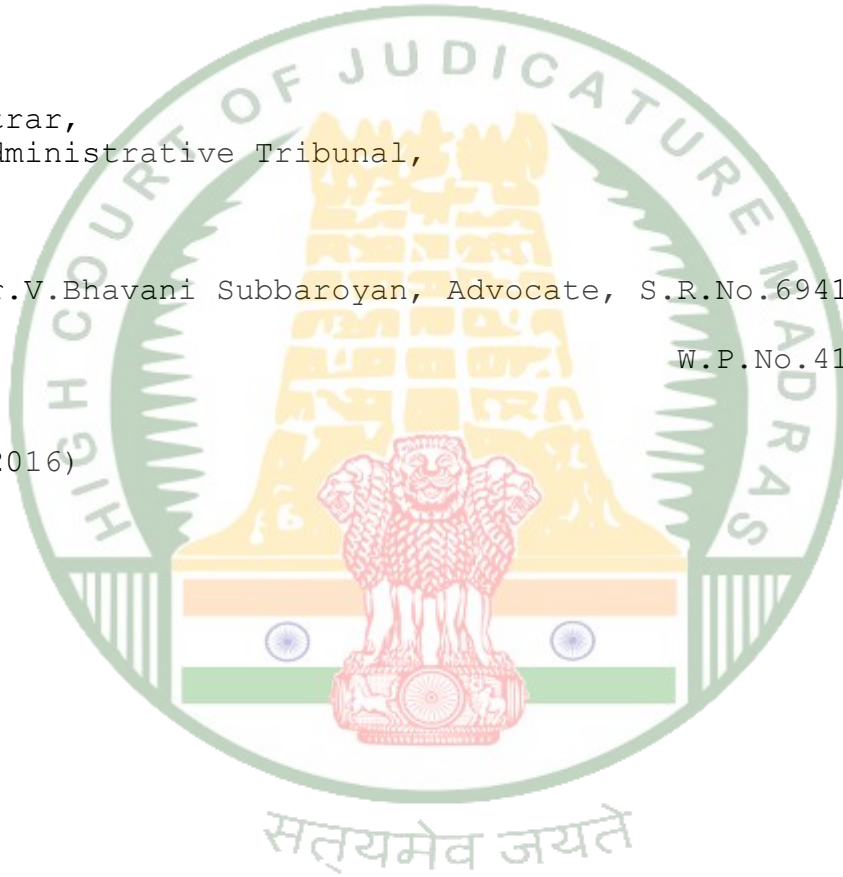
To

The Registrar,
Central Administrative Tribunal,
Chennai.

+1cc to Mr.V.Bhavani Subbaroyan, Advocate, S.R.No.69415

W.P.No.41586 of 2016

VD(CO)
CA(29/12/2016)



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