

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM

AND

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Petn.No.4669 of 2016

and

W.M.P.No.4043 of 2016

- 1.The Secretary,
Ministry of Defence,
Department of Defence Production,
South Block, New Delhi-110 001
 - 2.The Chairman,
Ordinance Factory Board,
10-A, S.K.Bose Road,
Kolkata-700 007
 - 3.The Senior General Manager,
Heavy Vehicles Factory,
Avadi, Chennai-600 054
- Petitioners

-vs-

- 1.B.Tamizharasan
 - 3.The Central Administrative Tribunal,
Rep.by its Registrar,
Madras Bench,
Chennai-600 104
- Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, calling for the records of the 2nd respondent, dated 19.08.2015 made in O.A.No.1161 of 2013 and quash the same.

For Petitioners : Mr.V.P.Sengottuvel
For Respondents : Ms.K.Sheeba for
M/s.Paul & Paul for R1
R2-Tribunal

JUDGMENT

(Judgment of the Court was delivered by
A.SELVAM, J)

This writ petition has been filed against the order, dated 19.08.2015, passed in O.A.No.1161 of 2013, by the Central Administrative Tribunal, Madras Bench.

2. The first respondent herein, as applicant, has filed O.A.No.1161 of 2013, on the file of the Central Administrative Tribunal, Madras Bench, praying to quash the proceedings dated 26.6.2013, passed by the third petitioner/third respondent, wherein it is stated that the first respondent/applicant has served as Chemical Process Worker in Aruvankadu, Ooty District and on the basis of his request, he has been transferred to Heavy Vehicles Factory, Avadi, and posted as Machinist Skill Grade. But his seniority has been fixed from the date of joining in the new factory and he has given a representation and the same has been rejected on 26.6.2013, by way of passing the impugned order and in order to set aside the same, O.A.No.1161 of 2013 has been filed on the file of the Central Administrative Tribunal, Madras Bench.

3. The Central Administrative Tribunal, Madras Bench, after considering the contentions put forth on either side, has allowed O.A.No.1161 of 2013, by way of passing the impugned order and in order to quash the same, the present writ petition has been filed under Article 226 of the Constitution of India.

4. The learned counsel appearing for the petitioners has contended that as per Circular dated 28.5.1974, if an employee, on his own request, has been transferred from one factory to another on compassionate grounds, his seniority in the existing post will be reckoned from the date of his joining in the new factory and further, the first respondent/applicant himself has given an undertaking to the effect that his seniority in the new factory will be reckoned from the date of joining in new factory and the Tribunal, without considering the undertaking given by the first respondent/applicant, has erroneously set aside the impugned proceedings dated 26.6.2013 and therefore, the order passed by the Central Administrative Tribunal, Madras Bench, is liable to be quashed.

5. The learned counsel appearing for the first respondent/applicant has contended that the first respondent/applicant has served as Chemical Process Worker in Aruvankadu and even though on his own request, he has been transferred to Heavy Vehicles Factory, Avadi, and posted as Machinist-Skilled Grade, his seniority should not be fixed from the date of joining in the new factory. Under the said circumstances, a representation has been given, but the third respondent has rejected the same by way of passing the impugned order, dated 26.06.2013 and the Central Administrative Tribunal, Madras Bench, after considering the claim of the first respondent/applicant has rightly allowed the O.A.No.1161 of 2013, by way of passing the impugned order and the same is not liable to be quashed.

6. It is an admitted fact that prior to transfer to Heavy Vehicles Factory, Avadi, the first respondent/applicant has served as Chemical Process Worker in Aruvankadu, Ooty District and subsequently, on his own request, he has been transferred to Heavy Vehicles Factory, Avadi and posted as Machinist Skilled Grade.

7. The only point that has to be decided in the present petition is as to whether the first respondent/applicant can claim his original seniority, since he has been transferred from one factory to another.

8. The entire contention put forth on the side of the petitioners is based on the Circular dated 28.5.1974, wherein it is stated like thus:-

"... that in the case of an Industrial employee transferred from one factory to another on compassionate grounds on request, his seniority in the existing post will be reckoned from the date he joins in the new factory".

9. It is an admitted fact that the first respondent/applicant has been transferred from Aruvankadu to Avadi only on the basis of his requisition, wherein it is stated like thus:

"I understand that my seniority in the re-designated/Reverted trade/Grade will be reckoned from the date I join new factory for the purpose of trade test, promotion, permanency etc.,
... "

10. Even in the Policy Guidelines and instructions of transfers of Industrial employees, it is stated that in cases of transfer from one factory to another factory on compassionate grounds, on individual's own request, the seniority of the concerned individual in the existing grade shall be reckoned

from the date he joins the new factory. Therefore, it is quite clear that the seniority of the first respondent/applicant will be reckoned only from the date of joining in the new factory.

11. The Central Administrative Tribunal, without properly considering the Circular and other Guidelines, has erroneously set aside the impugned order dated 26.6.2013 passed by the third petitioner/third respondent. In fact, the third petitioner/third respondent, after considering the existing Circular, Clarifications and Guidelines, has rightly stated in the impugned order that the seniority of the first respondent/applicant will be reckoned from the date of his joining in new factory. Therefore, viewing from any angle, the order passed by the Central Administrative Tribunal, Madras Bench, is totally erroneously and the same is liable to be quashed.

In fine, this writ petition is allowed without cost. The order dated 19.08.2015 passed in O.A.No.1161 of 2013, by the Central Administrative Tribunal, Madras Bench, is quashed and the application filed in O.A.No.1161 of 2013 is dismissed without cost.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

msk

To
The Registrar,
The Central Administrative Tribunal,
Madras Bench,
Chennai-600 104

+1 cc to M/s.V.P.Sengottuvel Advocate sr.37620
+1 cc to M/s.Paul & Paul Advocate sr.37764

W.P.No.4669 of 2016

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