

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
And
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.5024 of 2016
And
W.M.P.No.4379 of 2016

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

Vs.

- 1.P.Perumal
- 2.The Registrar
Central Administrative Tribunal,
Chennai. Respondent

Prayer:

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.44 of 2013, dated 15.07.2015 and quash the same.

For Petitioner : Ms.V.Bhavani Subbaroyan
For Respondent : Mr.L.Chandrakumar
No.1

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN,J.)

By consent, the writ petition is taken up for final disposal.

2.The writ petitioners are the official respondents in O.A.No.44 of 2013 on the file of the Central Administrative Tribunal, Madras and aggrieved by the allowing of the said application filed by the first respondent herein, had filed this writ petition.

3.The facts in brief necessary for the disposal of the writ petition are as follows:

(i)The first respondent was officially engaged as substitute Gangman in the Engineering Department, Tiruchirappalli Division of Southern Railway and he was empanelled with effect from 05.10.1976. The first respondent was promoted as Keyman in the year 1991 and got further promotion as Gangmate in the year 1993 and the first respondent was given ad-hoc promotion as a Permanent Way Mistry in the pay scale of 1500 - 2300 and he discharged the duties in the said post from the year 1993 and while he was working as Permanent Way Mistry in the pay scale of Rs.4500 - 7000, a new category was introduced by way of cadre restructuring in the Permanent Way of Engineering Department and the first respondent along with other personnel were reverted to the substantial post with pay scale of Rs.3050 - 4590 with effect from 31.03.2008 and got his further promotion as Senior Permanent Way Supervisor in the scale of pay of Rs.5000 - 8000 on ad-hoc basis on and from 22/23.05.2008. VI Pay Commission recommendations were implemented and pay scale of Permanent Way Supervisor was replaced with pay band of Rs.9300 - 34800 with grade pay of Rs.4200/-.

(ii)It is the case of the first respondent that he continued to work in the post of Permanent Way Supervisor till the attainment of the age of superannuation on 31.10.2011 and his pay was revised vide order dated 14.10.2011 and accordingly, his pay was reduced to Rs.9190/- with Grade pay of Rs.1900/- with effect from 01.04.2008 and his pension and other retirement benefits, were calculated with pay as Rs.12250 in the pay band of Rs.5200 - 20200 with grade pay of Rs.2400/-.

(iii)According to the first respondent, on the date of retirement, he was holding the post of Senior Permanent Way Supervisor in the pay band of Rs.9300 - 34800 with grade pay of Rs.4200 and pension and other consequential retirement benefits should have been fixed taking into consideration of his last drawn pay in the post of Permanent Way Supervisor.

(iv)The application filed by the first respondent before the Tribunal was resisted by the Official respondents/ petitioners by filing their reply. They took the stand that the promotion of the applicant/ first respondent to the post of Permanent Way Mistry was purely on ad-hoc basis with scale of pay of Rs.5000 -

8000 (IV Central Pay Commission), grade pay Rs.4200/- (IV Central Pay Commission) vide order dated 22/23.05.2008 and the ad-hoc promotion of the first respondent as Permanent Way Supervisor was extended from time to time.

(v) It is the further stand of the Official respondents/ petitioners that the applicant/ first respondent was put on notice that his ad-hoc promotion was subject to pending finalization of selection and it would not confer any right of assignment of seniority in the pay band of Rs.9300 - 34800 with grade pay of Rs.4200/- and as such, the applicant/ first respondent as a matter of right cannot be entitled with all benefits.

(vi) The Tribunal has taken into consideration Rule 1313 of FR 22 (1) (a) (i) of the Indian Railway Establishment Code as well as Rule 49 of Indian Railway Establishment Manual and also taken into consideration the earlier orders passed by the Tribunal in O.A.No.51 of 2011 wherein, similar issue was considered and extracted the same in paragraph no.9 of the judgment.

(vii) It is also relevant to extract hereunder paragraph no.8 of the order dated 04.05.2011 in O.A.No.51 of 2011 for better understanding:

"8. In this OA, the dispute with regard to fixation of pension of the applicant. The applicant retired on 30.09.2010. It is not in dispute that the applicant was promoted as Superintendent Grade-I on adhoc basis with effect from 29.3.2006 by the respondents' order dated 29.3.2006 marked as Annexure A-4. Though it was initially for a period of three months, but the applicant was allowed to continue in the promotional post on adhoc basis till the date of his retirement on 30.9.2010. On the date of his retirement, the applicant in receipt of the pay of the promotional post. The respondents have also passed order dated 02.9.2010 signed by Senior Personnel Officer, marked Annexure A-5, wherein it is mentioned that Shri K.K.A.Devarajan Office Superintendent Grade-I is retired from service on 30.9.2010. Therefore, even the letter of superannuation dated 2.9.2010 confirms that the applicant, on the date of his retirement was working as Office Superintendent Grade-I (adhoc). That being the case, his retiral benefits including the pension has to be fixed only in

accordance with the last pay drawn. While implementing the 5th Pay Commission from 01.01.1996 Government of India has issued OM dated 17.12.1998, wherein it is mentioned "Pension of all pensioners, irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay with effect from 01.01.1996 of the post last held by the pensioner." Therefore, it shall mean that from 01.01.1996, the pension of a retired Government employee cannot be less than 50% of the minimum of the pay that

he was drawing on the date of his superannuation. In the instant case, the respondents themselves have passed order dated 02.9.2010 marked Annexure A-5 that he retired as Office Superintendent Grade-I (adhoc) in the pay band of Rs.9300-34800 plus Grade Pay of Rs.4600/-. Such being the case, the subsequent order that has been passed by Assistant Personnel Officer on 30.9.2010, who is a lower authority is impermissible. There is no record to show that the adhoc promotion granted to the applicant has been terminated. He was allowed to work as Office Superintendent Grade-I. It is for the respondents to explain how he was allowed to continue. The stand taken by learned counsel for the respondents that it was a mistake and he should not have continued beyond 31.3.2007 goes to prove that the applicant is in no way responsible for any excess payment that is alleged to have been made to him. The applicant, from the date of his adhoc promotion on 29.3.2006 has continued to work without any break in the capacity of Office Superintendent Grade-I till the date of his retirement and he has also drawn the salary applicable to the above post. Even at the cost of repetition, I would like to mention that the retirement order dated 02.9.2010 marked Annexure A-5 also specifically mentions that he had retired as Office Superintendent Grade-I (adhoc)."

(viii) The Tribunal on a careful scrutiny of the materials placed before it, has found that the decision rendered by the Tribunal in the above said case squarely apply to the facts of this case and held that the action of the Official respondents

in fixing the pension ignoring the ad-hoc promotion of the applicant/ first respondent as on the date of the retirement cannot be sustained and thereby setting aside the impugned order dated 31.10.2011, allowed the original appeal.

4.The learned counsel appearing for the petitioners/ Official respondents would submit that in the Original Appeal since the first respondent was put on notice that his promotion to post of Senior Permanent Way Supervisor was purely temporary, he cannot claim any right as a consequence of holding the said post and would further contend the Tribunal without properly appreciating the facts and circumstances of the case has erroneously placed reliance upon the order dated 04.05.2011 made in O.A.No.51 of 2011 and allowed the Original Appeal and hence, prayed for interference.

5.Per contra, Mr.L.Chandrakumar, learned counsel appearing for the Respondents would submit that admittedly O.A.No.51 of 2011 which has been placed reliance to arrive at a decision has reached finality as no challenge has been made to the said order and it squarely applies to the facts and circumstances of the case and hence, the Tribunal has rightly allowed the appeal and hence prayed for dismissal of the writ petition with costs.

6.This Court has carefully considered the rival submissions and also perused the materials placed before it.

7.Paragraph no.8 of the order dated 04.05.2011 made in O.A.No.51 of 2011 would disclose that the official memorandum issued by the Government of India dated 17.12.1998 has been taken into consideration and it has been held that the pension of a retired Government employee cannot be less than 50% of the minimum of the pay that he was drawing on the age of his superannuation and in that case the respondents themselves had passed the order dated 02.09.2010 conferring the said benefits. It has been further recorded in the said order that there is no record to show that the promotion granted on ad-hoc basis, has been terminated.

8.In the considered opinion of this Court, till the age of superannuation, the first respondent continued to work as Senior Permanent Way Supervisor without any break in the temporary capacity for a long time and his position in the said post, has not been disturbed. In the considered opinion of this Court, the order cited supra is squarely applicable to the facts and circumstances of this case and the Tribunal on correct application of mind has taken into consideration the said aspect and rightly arrived at a decision to grant the relief to the applicant/ first respondent.

9.This Court on independent application of mind and on perusal of the records placed before it, is of the view that there is no perversity or irregularity in the findings of the Tribunal in reaching the conclusion to allow the Original Application.

10.Therefore, the writ petition is dismissed at the admission stage itself. No costs. Consequently, the connected miscellaneous petition is also closed.

11.The writ petitioners/ Official respondents are directed to implement the order dated 15.07.2015 passed by the Tribunal in O.A.No.44 of 2013, within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Registrar
Central Administrative Tribunal,
Chennai.

2.The General Manager,
Southern Railway,
Park Town,
Chennai.

3.The Divisional Railway Manager,
Tiruchirappalli Division,
Southern Railway,
Tiruchirappalli.

4.The Senior Divisional Financial Manager,
Tiruchirappalli Division,
Southern Railway,
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W.P.No.5024 of 2016

And

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ve (CO)
srg (18/02/2016)