

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 2598 OF 2016

1. Union of India, through the Secretary, Ministry of Communications, Department of Post, Sanchar Bhawan, New Delhi.
2. Superintendent, Railway Mail Services, Raipur Division, District Raipur (C.G.)
3. Deputy Director of Accounts (Postal), Tikrapara, Raipur, District Raipur (C.G.)

... Petitioners

Versus

Smt. Mahua Sarkar, W/o Shri Kamlesh Sarakar, aged about 55 years, Retired as Sorting Assistant, RMS, Raipur, District Raipur, R/o Qtr. No. 795/796, Janta Colony, Tilaknagar, Gudhiyari, Raipur, District Raipur (C.G.)

.... Respondent

For Petitioners	:	Mr. N.K. Vyas, Assistant Solicitor General.
For Respondent	:	Mr. B.P. Rao, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per Thottathil B. Radhakrishnan, C.J.

29/03/2017

1. We have heard learned Assistant Solicitor General and learned Counsel for the Respondent.
2. This is an application under Article 226 of the Constitution of India, by the Union of India and the Postal Department, that is to say, the Railway Mail Services.
3. The matter relates to certain service benefits granted to the Respondent, a lady Sorting Assistant, who was granted Biannual Cadre Review promotion with effect from 1.1.2007 after completion of 27 years of services in August, 2006. She was due for annual increment in the month of August, 2007. But in view of the fact that she was granted Biannual Cadre Review promotion with effect from 1.1.2007, she opted for and was granted grade pay with effect from 1.1.2007 and her pay was revised

under Biannual Cadre Review with effect from 1.1.2007 along with promotional increment as well as usual annual increment. She had to move the Tribunal when she faced certain recovery proceeding and proposal to revise her pension. Her plea was that she availed two days casual leave due to illness and she requested for extension of that casual leave for one more day to convert it as medical leave. However, that period of three days was treated as dies non as against which, it is submitted that, an application or appeal is pending with the department.

4. Be that as it may, ignoring the three days of dies non, the department granted her annual increment in due date with effect from 1.1.2007 and accordingly she had been paid her entitled salary till the month of July, 2013 when her voluntary retirement was accepted with effect from 21.8.2013. The question was raked up by the department while quantifying due payment of service accruals and pension. The stand taken by the establishment was that there was over payment and hence they proceeded to recover an amount of Rs. 59,522/- from her gratuity amount and her pension and other retiral benefits were proposed to be trimmed down applying the rates as if she was not entitled to her annual increment with effect from 1.1.2007. It is this situation that led that woman member of the service who had put in 33 years of employment as Sorting Assistant in the Railway Mail Services to move the Central Administrative Tribunal.

5. The Tribunal noted that her case is similar to that of the case of Suraj Prasad v. Union of India & Others, decided by the Tribunal in Original Application No. 783 of 2011 through order dated 12.11.2013 and further held that she was entitled to the benefit of clarification issued by the Government of India on 13.9.2008. Resultantly, she has been granted relief directing the establishment to refix the employee's pay and consequentially revised her pension and pensionary benefits and pay and arrears in a time bound manner as directed. The proposal for the recovery

from gratuity was also annulled.

6. Learned Assistant Solicitor General submitted that, on facts, the case of the Respondent is not at par with that of Suraj Prasad (supra). He further argued that among clarification issued by the Government on 13.9.2008, it is clarification no.2 that would apply to the case of the Respondent rather than clarification no.1.

7. Learned Counsel for the Respondent argued that a plain reading of clarification no.2 in OM dated 13.9.2008 would show that it will not apply except in cases where it was a promotion after 1.1.2006 while clarification no.1 related to the date of next increment. The Tribunal has, essentially, relied on clarification no.1 in OM dated 13.9.2008. In terms thereof, all Government servants who earned their last increment between 2.1.2005 and 1.1.2006 would get next increment on 1.7.2006. Therefore, the fact that the establishment treated the absence of the Respondent for three days from 3.5.2007 to 5.5.2007 is of no consequence, because if the Government servant had earned the last increment between 2.1.2005 to 1.1.2006, that person would get the next increment on 1.7.2006.

8. The fact of the matter remains that the Respondent was admitted to duty and was performing the duties and responsibilities attached to the office held by her, even on 1.7.2006. It is also an undisputed fact that she had earned last increment between 2.1.2005 and 1.1.2006. In this factual matrix and the format and setting of the contents of clarification no.1 of OM dated 13.9.2008, we are unable to hold that the view taken by the learned Tribunal is unavailable or not plausible on the facts and materials on record, applying the instant rules and OM referred to above.

9. In this view of the matter, we do not find that, balancing the scales of justice as between the woman employee who was a Sorting Assistant on the one hand and the establishment on the other, any interference is called for with the order of the Tribunal in exercise of supervisory jurisdiction of

this Court in terms of Article 227, or for that matter, Article 226, of the Constitution of India. We, therefore, decline to interfere at the instance of the establishment, and affirm the decision of the Tribunal.

10. For the aforesaid reasons, the writ petition is dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge