

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.P.No.4619 of 2017

S.varadharajan
Protocol Inspector
Divisional office,
Southern Railways,
Madurai-1.

.... Petitioner

vs.

- 1.Union of India
rep. by the General Manager,
Southern Railway,
Chennai.
- 2.The Chief Personnel Officer,
Southern Railway,
Chennai.
- 3.The Divisional Railway Manager,
Southern Railway,
Madurai.
- 4.The Divisional Personnel Officer,
Southern Railway,
Madurai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records pertaining to the order dated 20.10.2016 passed in O.A.No.1682 of 2014 by the Central Administrative Tribunal, Madras Bench and quash the same and direct the respondents to restore the benefits granted under Office Order No.49/2011/TP-1 dated 25.10.2011 issued by the fourth respondent with all attendant monetary benefits.

For Petitioner : Mr.B.Ravi

For Respondents : Mrs.A.Srijayanthi

ORDER

(Order of the Court was made by HULUVADI G. RAMESH, J.)

Challenging the order passed by the Central Administrative Tribunal, Madras Bench (for brevity, 'the Tribunal'), the petitioner, who is the applicant in the Original Application No.310/01682/2014, has preferred the present writ petition before this Court.

2.The necessary facts leading to filing of this writ petition are that the petitioner was initially appointed as Commercial Clerk on 11.02.1979, as Senior Clerk on 24.09.1982 and as Traffic Apprentice/Station Master Gr.III on 22.7.1985/10.9.1988 respectively. While he was working as Protocol Inspector at Divisional Office, Southern Railway, Madurai, by the proceedings dated 25.10.2011, the petitioner was granted 3rd financial up gradation under MACP Scheme to the grade of Rs.5,400/- with effect from 11.2.2009. However, the said benefit was withdrawn by the fourth respondent on 24.10.2014 stating that the same was granted erroneously. Aggrieved over the same, the petitioner filed O.A.No.310/01682/2014 before the Tribunal, which dismissed the said Original Application, by the order impugned herein. Hence, this writ petition.

3.Learned counsel for the petitioner submitted that the petitioner is eligible for third financial up gradation under MACP Scheme, on completion of 30 years of continuous service from the date of initial appointment. However, by the proceedings dated 24.10.2014, the fourth respondent has withdrawn the third financial up gradation given under MACP Scheme and initiated recovery proceedings against the petitioner. Learned counsel further submitted that while the stay of recovery proceedings was in operation, the petitioner retired from service on attaining the age of superannuation on 31.07.2016. Learned counsel also placed reliance on a decision of the Hon'ble Supreme Court in the case of Yogeshwar Prasad and others v. National Institute of Education Planning and Administration and others [(2010) 14 SCC 323], wherein, it has been held that "grant of higher pay scale should not be recovered, unless it was a case of misrepresentation or fraud".

4.Learned counsel for the respondents reiterated the same averments as stated in the counter affidavit filed by the respondents.

5.Having regard to the facts and circumstances of the case and taking note of the rival submissions made on either side, we deem it appropriate to direct the respondent concerned to reconsider the issue involved herein.

6. Accordingly, the order dated 20.10.2016 passed by the Tribunal as well as the order dated 24.10.2014 passed by the fourth respondent are set aside. The matter is remanded back to the respondent concerned for fresh consideration. The petitioner is directed to submit a detailed representation to the respondent concerned within a period of one month from the date of receipt of a copy of this order. On such submission, the respondent concerned shall consider the same and take a decision on merits and in accordance with law, within a period of one month thereafter. Till such time, the respondent concerned shall not proceed with the recovery proceedings against the petitioner.

7. The writ petition is disposed of in the above terms. No costs.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The General Manager,
Southern Railway,
Chennai.

2. The Chief Personnel Officer,
Southern Railway,
Chennai.

3. The Divisional Railway Manager,
Southern Railway,
Madurai.

4. The Divisional Personnel Officer,
Southern Railway,
Madurai.

+1cc to Mr. R. Subramanian, Advocate Sr.No. 86721
+1cc to Mr. A. SRI. Jayanthi, Advocate Sr.No. 86745

NRK (CO)
sm:23.1.2018

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