

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.01.2017

Delivered on: .02.2017

Coram

The Honourable **Mr.Justice K.K.SASIDHARAN**

and

The Honourable **Mr.Justice V.PARTHIBAN**

W.P.Nos.24439 to 24442 of 2011

- | | |
|---------------------|--------------------------------------|
| 1. R.Baskaran | .. Petitioner in
WP 24439 of 2011 |
| 2. A.Annamalai | .. Petitioner in
WP 24440 of 2011 |
| 3. M.J.Suvarnakumar | .. Petitioner in
WP 2441 of 2011 |

versus

- 1 UNION OF INDIA
REP.BY GENERAL MANAGER
ICF, CHENNAI-600 038.
- 2 THE CHIEF PERSONNEL OFFICER
ICF CHENNAI-600 038.
- 3 THE ASSISTANT PERSONAL OFFICER(G)
ICF CHENNAI-600 038.
- 4 S.KRISHNAN

- 5 P.SULAIMAN
- 6 M.HARI
- 7 S.G.ELANGO VAN
- 8 N.VASU
- 9 M.AMBEDKAR
- 10 M.RAGHU
- 11 B.MATHEW
- 12 T.VENKATESAN
- 13 L.THULASIRAMAN
- 14 V.K.IBRAHIM
- 15 B.JAYABAL
- 16 V.SEKAR
- 17 C.M.ANWAR SEDATH
- 18 V.JAGADEESWARAN
- 19 A.S.ZAMEERBASHA
- 20 M.SHANMUGAM
- 21 B.GANESAN
- 22 P.MURALI
- 23 S.RADHAKRISHNAN
- 24 T.ALIKOYA
- 25 ARAVIDIKSHAM

26 CENTRAL ADMINISTRATIVE
TRIBUNAL REP.BY ITS REGISTRAR HIGH COURT
COMPOUND CHENNAI-600 104.

27 PATTURAJA

28 B.LOGAMBIRAM .. Respondents
in all W.Ps.

Prayer: These Writ Petitions are filed under Article 227 of the Constitution of India, to call for the records of relating to the order dated 28.02.2011 passed in O.A.Nos.547, 575, 670 and 726 of 2009 by the 26th Respondent Tribunal and quash the same.

For Petitioners : Mr. P.V.S.Giridhar

For Respondents: Mr.J.Harikrishna

COMMON ORDER

V.PARTHIBAN, J.

These Writ Petitions have been filed against the common order passed by the Central Administrative Tribunal (in short, 'the Tribunal'), Madras Bench, dated 28.02.2011 passed in O.A.Nos.547, 577, 670 and 716 of 2009 filed by the petitioners

herein, dismissing the Original Applications.

2. Since the issues and grounds raised in all the Original Applications are common to all the applicants and the respondents, the Original Applications came to be disposed of by a common order, dated 29.2.2011. Therefore, it would be appropriate to dispose of the present writ petitions also by this common order.

3. The petitioners have approached the learned Tribunal, seeking the following relief:

"To set aside the impugned order dated 2.12.2008 passed by the respondent No.3 in proceeding No.PB/S1/CE/Artisan/Decasulition and consequently direct the respondents 1 to 3 to apply annual cadre review in the year 1993 and 2003 and accordingly give promotion to the applicants as Grade II in the year 1993 and skilled Gr.I in the year 2003 with all benefits and also fix correct seniority by placing the applicants above respondent No.4 in the seniority list 7.2.2007."

4. According to the petitioners, they were originally entered Railway Service in 1989 as Khalasis and under the de-casualization programme, permanent posts were created by the order dated 10.3.1989. The petitioners were considered for regular appointments and thereafter, they were selected and posted as Skilled Grade III in the pay scale of Rs.950-1500 vide order dated 31.8.1989 in the Civil Engineering Department. At the time of appointment, it was made clear that seniority in the Civil Engineering Department will count from the date of appointment in the post of Skilled Grade III.

5. According to the petitioners, the employees who were working in Ex-cadre post in Civil Engineering Department, who came to the Department after the petitioners, were given cadre status and assigned seniority over and above the petitioners by taking into consideration their seniority position in their parent department. According to the petitioners, private respondents ought to have been shown as juniors to them since they were appointed to the cadre post much after them. The grievance of the petitioners was that proper cadre review was not conducted between 1993 and 2003 and if cadre review had been conducted

promptly, they would have been given the promotion to the higher grades periodically. In the absence of cadre review for 10 years, they were denied promotion to the higher grade. In all, the grievance of the petitioners is that they lost not only seniority, but also further promotion to the higher grades.

6. Per contra, the Railway Administration, while resisting the claim of the petitioners, stated that the employees who were holding higher cadre status, were placed in the higher grades and the persons who were holding lower cadre status, were placed in the lower grades based on the cadre strength. Moreover, it was contended on behalf of the Railways that during the years 2005 to 2008, seniority lists were issued in which, the position of the petitioners was shown to be juniors to the private respondents. However, the petitioners did not choose to challenge their seniority position and they have chosen to challenge the non-review of the cadre and the seniority list belatedly after so many years. Therefore, the applications are deserved to be dismissed.

7. After taking note of the rival submissions, the learned

Tribunal proceeded on the basis that there was a lapse of 17 years in agitating the matter and on the ground of delay alone, the applications were liable to be dismissed. According to the Tribunal, annual cadre review was not conducted for the years 1993 to 2003, it ought to have been agitated in 1993 itself and the petitioners having been appointed in the general post with the consultation of the Staff Council, cannot be heard to complain about the fixation of seniority. The learned Tribunal concluded that the petitioners having accepted the promotions during the years 2003 and 2005 without demur, cannot be allowed to resile after very many years since that would unsettle the settled seniority list which was published after due notification in the respective years. As against the order of the Tribunal, the present Writ Petitions have been filed.

8. Shri P.V.S.Giridhar, learned counsel appearing for the petitioners strenuously contended that the learned Tribunal has not appreciated various issues raised before it, but simply refused the relief on the basis of perceived delay when actually it was not so and dismissed the Original Applications. Moreover, he contended that the seniority list which was stated to have

been published in 2005, 2007 and 2008 were only provisional seniority lists for which, objections were also raised, however, no final orders were passed. That being the case, questioning of those seniority lists at that point of time did not arise at all. Shri Giridhar further contended that the private respondents have entered into Civil Engineering Department subsequent to the petitioners, however, the petitioners were not placed above them. Placing the private respondents above the petitioners when admittedly, their appointments were subsequent to the appointment of the petitioners, would be contrary to the statutory Rule governing the fixation of seniority in the Railway Administration. In fact, he conceded during the course of arguments that the submission regarding non-conduct of cadre review from the year 1993 to 2003 would not help his clients' case at this distant point of time. However, he emphasized the fact that other grounds raised in the Original Applications regarding the appointment of private respondents in the subject post subsequent to the appointment of the petitioners and despite the same, seniority had been wrongly fixed as between the petitioners *vis-a-vis* private respondents in which, the private respondents who had been appointed subsequent to the

petitioners had been shown as seniors. According to Shri Giridhar, in spite of their legitimate objections to the provisional seniority list, which was published periodically, no valid explanations emanated from the Railway Administration.

9. Per contra, the learned counsel appearing for the Railways contended that the Tribunal has rightly dismissed the applications principally on the ground of delay as well as on merits and therefore, the same does not call for any interference from this Court.

10. Shri PVS Giridhar, learned counsel, during the course of arguments, has taken us various materials filed in support of his claim and impressed upon this Court to contend that the learned Tribunal had not focused with core issues raised in the Original Applications, but had taken a decision against the petitioners side-stepping those issues and the Tribunal principally guided by the fact that the issues cannot be agitated after a lapse of long period of time.

11. We gave our anxious consideration to the submissions

made on behalf of the parties and we find that there is considerable force in the arguments of Shri PVS Giridhar that the learned Tribunal had not appreciated the substantial issues raised in the Original Applications. We do not find any finding of fact as to how the private respondents who were appointed subsequent to the petitioners have been shown as seniors to the petitioners. The order passed by the learned Tribunal does not reflect that the issues had been agitated and considered and rendered a finding. Therefore, in fitness of things, we are of the view that the Tribunal has to appreciate and address all the issues raised in the Original Applications afresh and passed orders therein.

12. In such view of the matter, the order of the learned Tribunal, impugned in these writ petitions, is set aside and the matter is remitted back to the learned Tribunal for fresh consideration and disposal of the Original Applications by considering all the issues raised in the Original Applications. For this purpose, the Original Applications stand restored. The Tribunal is directed to dispose of the Original Applications as expeditiously as it deems fit.

With the above direction, these Writ Petitions stand disposed of. No costs. Consequently, connected WMPs are closed.

suk

(K.K.S.,J.) (V.P.N.,J.)
-02-2017

Index: Yes/No
Internet: Yes/No

K.K.SASIDHARAN, J.

AND

V.PARTHIBAN, J.

Pre Delivery order in
W.P.Nos.24439 to
24442 of 2011

-02-2017