IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.02.2017

Delivered on: 24.02.2017

Coram

The Honourable Mr.Justice K.K.SASIDHARAN
and
The Honourable Mr.Justice V.PARTHIBAN

W.P.No.20724 of 2015

1 All India Postal Accounts
Employees Association
Rep. by its President
S.Santhosh Kumar
No.B-1 Pillar Apartments
New No.24 10th Avenue
Ashok Nagar
Chennai-600 083.

2 T.R.Theagarajan

3 A.P.Perumal .. Petitioners

versus

1 Union of India
Rep. by the Secretary,
Department of Posts
(Postal Accounts Wing)
Ministry of Communications & IT,
Dak Bhavan, Sansad
Marg, New Delhi-110 001.

2 The Secretary
Department of Personnel & Training
Ministry of Public Grievances and Pensions
North Block New Delhi-110 001

3 The Deputy Director General (PAF)
Department of Posts (Postal Accounts Wing)
Ministry of Communications & IT.
Dak Bhavan Sansad Marg
New Delhi-110 001.

4 The Assistant Director General (PA-ADMN)
Department of Posts (Postal Accounts Wing)
Ministry of Communications & IT.
Dak Bhavan Sansad Marg
New Delhi-110 001.

5 The Registrar
Central Administrative Tribunal
Chennai-600 104. ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the 5th respondent which is made in O.A. No.1473 of 2012 dated 23.3.2015 and the order made in R.A. No.9 of 2015 in O.A. No.1473 of 2012 dated 3.6.2015 and quash the same consequent to direct the respondents 1 to 4 to treat the placement of the members of the 1st petitioner Association in the Higher Grade as Senior Accountants from the Cadre of Junior Accountants due to re-structuring of Accounts Cadre as not a promotion and thereby further direct to grant the ACP benefits to them accordingly with all consequential benefits including monetary benefits.

For Petitioners : Mr. R.Malaichamy

For Respondents 1 to 4 : Mr.V.P.Sengottuvel, SPC

R5 : Tribunal

ORDER

V.PARTHIBAN, J.

This Writ Petition has been filed against the order passed by the learned Central Administrative Tribunal (in short, 'the Tribunal'), Madras Bench in O.A.No.1473 of 2012, dismissing the original application filed by the petitioners herein.

2. The writ petitioners herein, have approached the learned Tribunal, seeking the following relief:

> "To call for the records pertaining to the order of the 3rd respondent which is made in No.33 (1)/09/PA-Admn.1/KWII/137 dated 20.6.2012 and set aside the same and consequently,
>
> "to direct the respondents 1, 3 and 4 to extend the benefit of judgment rendered in OA No.335 of 2007 dated 26.8.2008 by this Tribunal by treating the placement of the members of the 1st applicant association in the Higher Grade in the Higher scale as Senior Accountants from the cadre of Junior Accountants due to restructuring of Accounts cadre as not a promotion and thereby to direct the respondents 1, 3 and 4 to grant ACP benefits to them accordingly with all consequential benefits including monetary benefits."

3. According to the petitioners, their appointment to the post of Senior Accountant was not a promotion, but on the basis of restructuring order issued by the official respondents vide Official Memorandum dated 12.6.1986 implemented with effect from 1.4.1987 in respect of organized accounts cadre, as per which, 80% of the posts were placed on higher grade as Senior Accountant. In pursuance of the recommendation of V Central Pay Commission, Assured Career Progression Scheme (in short, 'ACP Scheme') was introduced in August 1999, which provided two financial upgradations, one on completion of 12 years and other on completion of 24 years of regular service. According to the petitioners, the benefit of upgradation was not extended to the petitioners on the ground that their appointment to the post of Senior Accountant was treated as promotion. In view of non-extension of ACP benefit, the first petitioner approached the Central Administrative Tribunal, Principal Bench at New Delhi by filing O.A.No.955 of 2010 and the Principal Bench, by order dated 20.8.2010, directed the applicants therein, to file a comprehensive representation to the competent authority and the representation was thereafter to be disposed of. However, subsequently, the claim of the applicants therein, was rejected. Thereafter, the applicants had challenged the order of rejection in O.A.No.1066 of 2011 before the Principal Bench of the Central Administrative Tribunal at New Delhi. However, the Principal Bench, vide order dated 23.4.2012, remitted the matter back to the Official respondents for fresh consideration with reference to the order passed by the High Court of Bombay, Nagpur Bench in W.P.No.559 of 2008. The claim of the applicant therein, once again rejected vide order dated 20.6.2012. Having been unsuccessful in the earlier round of litigation, the petitioners approached the Madras Bench of the Tribunal by way of subject O.A.

4. The petitioners have relied on the orders passed by the Tribunal dated 26.8.2008 in O.A.No.335 of 2007 which was confirmed upto the Hon'ble Supreme Court. Therefore, the petitioners had claimed that they were also entitled to the same relief of ACP benefit to be extended to them.

5. Per contra, on behalf of the respondents, the claim of the petitioners herein, was sought to be resisted on the ground that while restructuring of Accounts Staff in Organized Accounts cadre, 80% of the posts were placed in the higher grade and the post was treated as functional grade to be designated as Senior Accountant. Being a promotional post, the fixation of pay on promotion to Senior Account cadre is made under the provisions of the relevant Rules applicable in the case of promotion to a post. According to the official respondents, the movement of an employee from the cadre of Junior Accountant to the cadre of Senior Accountant was a regular promotion for the reasons, viz., both the grades have different duties and responsibilities; Promotion involves assumption of higher duties and responsibilities; Pay fixation is done under FR 22(C) (old

rule); and promotion is through the mechanism of DPC. Therefore, the petitioners herein were not entitled to the benefit of ACP scheme. It was also the contention of the official respondents that the order passed in OA 33 of 2007, dated 26.8.2008 cannot be made applicable to the case on hand, as Recruitment Rules followed by the Department of Railways for the Accounts cadre and the hierarchy of the posts available in the Department of Railways was entirely different from that of the Postal Accounts Offices in the Department of Posts. It was further contended that the judgment dated 29.9.2009 of the Bombay High Court rendered in the facts of that case, cannot be cited as a precedent for allowing the claim of the petitioners herein.

6. On behalf of the petitioners, a rejoinder was filed before the Tribunal, refuting the contention of the official respondents that the duties and responsibilities were different for Junior Accountant and Senior Accountant and application of FR 22(C) can also be applied in respect of the post where no assumption of higher duties and responsibilities were involved.

7. By way of additional counter, the official respondents contended that as per the relevant Recruitment Rules, the method of recruitment to the post of Senior Accountant was entirely to be filled up by promotion on the basis of seniority cum fitness from among Junior Accountants with three years of regular service. As such, on promotion as Senior Accountant, their pay was fixed under FR 22(C) (old Rule) and such fixation under the Rule, would clearly denote that the movement from Junior Accountant to Senior Accountant shall only by way of promotion and cannot be construed otherwise.

8. After taking note of the detailed submissions of the parties, the learned Tribunal dismissed the Original Application by accepting the contentions of the official respondents that the appointment of the petitioners to the cadre of Senior Accountant was only by way of promotion, as the appointees were granted the benefit of fixation of pay under FR 22(C) (old Rule) and such fixation can only happen when an appointment involves promotion which involves assumption of higher duties and responsibilities. The learned Tribunal has also reasoned that it was not mere upgradation on restructuring of the Accounts cadre, since in the instant case, there was an element of selection for appointment and therefore, the placement of the petitioners in the grade of Senior Accountant can only be treated as a promotion.

9. The learned Tribunal, while concluding against the petitioners, has also relied upon its earlier decision rendered in O.A.Nos.383 and 384 of 2013 dated 11.3.2015. As against the order passed by the learned Tribunal, the present Writ Petition has been filed by the petitioners herein.

10. Shri R.Malaichamy, learned counsel appearing for the petitioners, strenuously contended that the appointment to the post of Senior Accountant was only by non-selection method as per the Recruitment Rules and hence such appointment cannot be construed to be one of the promotions strictly. Learned counsel has taken us through the Office Memorandum dated 12.6.1987 which indicates restructuring of Accounts staff in Organised Accounts Cadres and he has also taken us through the instructions dated 11.08.1987 issued by the Deputy Director General (PAF), emphasizing the fact that no reservation was available for SC & ST candidates for appointments made in the higher grades initially with effect from 1.4.1987 which fact would clearly demonstrate that the movement from Junior Accountant to the Senior Accountant cadre initially on restructuring, amounted only to upgradation and it cannot be termed to be promotion. In support of his contentions, the learned counsel cited a decision of the Central Administrative Tribunal, Ernakulam Bench, reported in 2007(1)(CAT) 179 "(Shaji Zacharia & others versus Union of India & others)" and contended that in case of promotion, reservation would apply and in the instant case, no reservation was applied and therefore, the same has to be construed only that it is an upgradation and not promotion and any appointment to higher post has to be viewed from different perspective on the basis of each facts and circumstances of the case as to whether it was a mere upgradation or a promotion.

11. Though at first blush, it appears that a plausible argument was advanced by the learned counsel appearing for the petitioners, the facts remains that at the time when the appointment was made from Junior Accountant to Senior Accountant, the pay of the petitioners was fixed under FR22(C) (old Rule). This fact would clearly demonstrate that such appointment cannot be construed except as one of promotion.

12. As regards the submissions of the learned counsel for the petitioners that as per the Recruitment Rules, appointment to the post of Senior Accountant was only by non-selection method, it has to be noted that even though the appointment was only by non-selection method, seniority being given primacy in the matter, still the fact remains that there was an element of selection involved in the appointment as admittedly the said appointment was done through DPC. Moreover, the other important factor to be noted is that as per the Recruitment Rules, appointment to the post of Senior Accountant is only from the grade of Junior Accountant who has completed three years of service in the feeder cadre. That being the case, mere wording 'uprgradation', cannot be construed to be as not one of promotion.

13. In the conspectus of the above facts, we are of the view that the petitioners have not made out any case for grant of relief and the order of the learned Tribunal impugned in the Writ Petition does not suffer from any infirmity. As regards

the decision relied upon by the learned counsel for the petitioner, it is to be noted that the learned Tribunal has given a factual finding on this aspect that there was an element of selection involved in the appointment and the petitioners had the benefit of fixation of pay under FR 22(C) (old Rule), which fact would unequivocally demonstrate that it was not a mere upgradation, but one of promotion.

For the foregoing reasons, the Writ Petition fails and it is dismissed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

suk
To:
1. The Secretary,
Department of Posts
Union of India
(Postal Accounts Wing)
Ministry of Communications & IT,
Dak Bhavan Sansad
Marg New Delhi-110 001.

2 The Secretary
Department of Personnel & Training
Ministry of Public Grievances and Pensions
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5 The Registrar
Central Administrative Tribunal
Chennai-600 104.

+1cc to M/s.V.P.Sengottuvel,Advocate sr.12220
+1cc to M/s.R.Malaichamy,Advocate sr.11807

order in
W.P.No.20724 of 2015

mp(co)
ss(7/3/2017)