

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2017

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THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN,

AND

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.28085 OF 2015

G.Srinivasan Petitioner

versus

1. The Union of India, rep. by
the Garrison Engineer,
Military Engineering Service (Army),
Fort St.George, Chennai-09.

2. The Assistant Garrison Engineer (E/M),
Military Engineering Service (Army),
Fort St.George, Chennai-09.

3. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 11.4.2014 in O.A.No.1381 of 2011 on the file of the 3rd respondent, quash the same and consequently, direct the respondents 1 and 2 to restore the grant of 1st ACP with effect from 09.08.1999 with benefit of arrears with effect from 30.01.2002 and all other benefits.

For Petitioner : Mr. G.Justin

For Respondents : Mr.J.Madanagopal Rao for
R1 and R2

ORDER

(Order of the Court was made by V.PARTHIBAN, J.)

This Writ Petition has been filed against the order passed by the Central Administrative Tribunal (in short, 'the Tribunal'), Madras Bench in O.A.No.1381 of 2011, dated 11.04.2014 dismissing the original application filed by the petitioner herein.

2. The petitioner/applicant has approached the Tribunal, seeking the following relief:

"To issue appropriate direction to the respondent 2 not to recover any amount from the applicant's salary in the guise of alleged over payments due to grant of erroneous 1st ACP and further direction may be issued to the respondents to refund the amount recovered from the applicant's salary from August, 2011 and September 2011."

3. The petitioner who was an employee under the respondents 1 and 2, was removed from service on the basis of disciplinary action with effect from 16.01.1996 which gave rise to the application being filed before the Tribunal in O.A.No.412 of 2001. The Tribunal, by its order dated 31.01.2002, allowed the Original Application and directed the respondents therein, to reinstate the petitioner in service without award of back wages.

4. While the matters stood thus, the petitioner was granted first financial upgradation under erstwhile ACP Scheme with effect from 09.08.1999 and second ACP Scheme benefit was granted with effect from 14.6.2007 and the petitioner received all arrears of salary due to fixation of salary on the basis of first ACP. However, subsequently, the respondents issued an order for recovery of the amount from the salary of the petitioner with effect from August 2011 onwards towards excess payment paid to the petitioner by grant of ACP benefits earlier wrongly.

5. The grant of first ACP to the petitioner with effect from 09.08.1999 was by mistake since the petitioner was admittedly was absent unauthorizedly for a period from 01.03.1993 to 15.01.1996, thereafter dismissed from service with effect from 16.01.1996 to 17.02.2002 and the said dismissal order was in force till 17.2.2002. Therefore, the petitioner was eligible for grant of first financial upgradation with effect from 18.2.2002 which was granted subsequently by correcting the mistake. In view of the postponement of grant first financial upgradation from 09.08.1999 to 18.2.2002, the earlier fixation granted with effect

from 09.08.1999 was cancelled and therefore, excess payment paid during the relevant period to the tune of Rs.77829/- was sought to be recovered. The said recovery was under challenge before the Tribunal.

6. The learned Tribunal, after hearing the parties to the proceedings, dismissed the application since the respondents had come up with clear justification as to how mistakenly the initial first financial upgradation was granted with effect from 09.08.1999 instead of 18.2.2002. In fact, the respondents also relied upon Government of India OM dated 09.09.2010 that if financial upgradation is deferred/postponed on account of the employee not found fit or due to departmental proceedings, etc., the financial upgradation under the Scheme to have a consequential effect of postponement.

7. The learned Tribunal accepted the contention put forth by the respondents that there was a clear case of mistake committed in the matter and the recovery was only a consequential action and the same cannot be interfered with. As against the order of the Tribunal, the present Writ Petition has been filed.

8. Mr.G.Justin, learned counsel appearing for the petitioner would contend that the recovery order passed by the respondents administration, was invalid in view of the fact that no prior notice was issued to the petitioner. But as far as the respondents were concerned, it was contended that in any case, no useful purpose would be served if any notice is given since the petitioner himself has not challenged the postponement of grant of first financial upgradation from 09.08.1999 to 18.2.2002. Therefore, mere challenge to the consequential direction of recovery, cannot be countenanced in law.

9. We have given our anxious consideration to the rival submissions of the parties and we are of the view that the petitioner has not chosen to assail the original action of the respondents in postponing the grant of first financial upgradation from 1999 to 2002. In any case, such challenge probably would not be successful in view of the punishment undergone by the petitioner during the relevant point of time. In any event, the challenge was only to the recovery which was consequential action after postponement of the grant of first financial upgradation. The relief as claimed by the petitioner cannot be granted separately in the absence of challenge to the original action taken by the respondents. In such view of the matter, the learned Tribunal rightly dismissed the application and we do not find any infirmity in the order.

Accordingly, the Writ Petition is dismissed as devoid of merits. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Garrison Engineer,
The Union of India
Military Engineering Service (Army),
Fort St.George, Chennai-09.

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+1 CC to Mr.J.Madanagopal Rao, Advocate Sr.No.12841

सत्यमेव जयते

W.P.No.28085 of 2015

PA(CO)
KP(18/04/2017)

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