

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 10.01.2017

Coram

The Honourable Mr.Justice K.K.SASIDHARAN
and

The Honourable Mr.Justice V.PARTHIBAN

W.P.No.33097 of 2015 &
M.P.No.1 of 2015

- 1 Union of India
rep. by the General Manager Southern
Railway Chennai
- 2 The Chief Personal Officer
Southern Railway,
Chennai 600 003
- 3 The Divisional Railway
Manager Southern Railway,
Madurai.
- 4 The Divisional Personnel
Officer Southern Railway,
Madurai.Petitioners
- versus
- 1 The Presiding Officer
Central Administrative Tribunal
Madras Bench,
Chennai
- 2 S.Varadarajan
- 3 R.Ramakrishnan
- 4 A.J.Chandrasekaran
- 5 M.Mahaganapathy
- 6 K.Chandrasekaran
- 7 S.Suresh Kumar
- 8 S.Pandian
- 9 T.SathiarajRespondents

Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records on the file of the 1st respondent in order made in O.A.No.1121/2012 dated 1.5.2015 and quash the same.

For Petitioner : Mr.V.Bhavani Subbaroyan

For Respondents: Mr.R.Subramanian
for R2to R9

ORDER

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

This Writ Petition has been filed by the Union of India, against the order passed by the Central Administrative Tribunal (in short, 'the Tribunal'), Madras Bench, dated 1.5.2015 in O.A.1121 of 2012 allowing the application filed by the employees who are arrayed as respondents 2 to 9 herein.

2. Respondents 2 to 9 herein have approached the Tribunal, seeking for the following relief:

"To pass orders to set aside the orders contained in letter number U/P.612/II/SM/Seniority/TA dated 15.2.2012 duly calling for the concerned case files and other connected records and direct the respondents to fix the seniority of the applicants in scale Rs.445-700 on the date of absorption in 1988 notionally as proposed in their letter No. U/P.612/II/SM/Seniority/TA dated 29.12.2011 and accord all consequential benefits such as promotion, pay fixation and monetary benefits due to the applicants."

3. The case of the respondents 2 to 9 before the Tribunal was that they were selected for appointment to the post of Traffic Apprentices to be observed as Station Masters in the pay scale of Rs.455-700 and on completion of the training, they were absorbed as Station Master Grade III in the pay scale of Rs.1400-2300. On implementation of the recommendations of IV Central Pay Commission, the pay scale of Rs.425-640 and 455-700 got merged into one scale of pay of Rs.1400-2300. However, the recommendation of IV Pay Commission was implemented only in November, 1986 with retrospective effect from 1.1.1986.

4. Subsequent to the implementation of the recommendations of IV Pay Commission, the Railway Board vide its

Memorandum, dated 15.5.1987 revised the pay scale of Traffic Apprentice with effect from 15.5.1987 while maintaining the revised pay scale of Rs.1400-2300 to those Traffic Apprentices who were selected before 15.5.1987.

5. The discriminatory treatment of two pay scales granted to Traffic Apprentices was subject matter of challenge before the Tribunal and the Tribunal granted the relief to the applicants therein for grant of higher pay scale of Rs.1600-2660 in OA Nos.322 of 1988 and 488 of 1987. However the order of the Tribunal was set aside by the Hon'ble Supreme Court of India, declaring that the grant of scale of pay of Rs.1400-2300 to the Traffic Apprentices appointed before 15.5.1987 was correct. After the order of the Hon'ble Supreme Court, the applicants were restored to the original position in the matter of fitment of their pay scale. However, the applicants have been representing the authorities concerned for re-fixation of their seniority properly on the basis of merger of pay scales which had taken effect on implementation of IV Pay Commission, namely, pay scale of Rs.425-640 and Rs.455-700 into one pay scale of Rs.1400-2300.

6. According to the respondents 2 to 9, their seniority has to be fixed above those who were in the erstwhile pay scale of Rs.425-640 and below of those who were in the pay scale of Rs.455-700 as per extant Rules. Since the claim of the respondents 2 to 9 was not considered positively, they have approached the learned Tribunal for the afore said relief.

7. The claim of the respondents 2 to 9 was sought to be resisted by the Union of India, the petitioner herein, stating that the Original Application was not maintainable in view of delay and laches and also on merits.

8. As regards the delay in approaching the Tribunal, the learned Tribunal has given a clear finding that the issue of seniority was under active consideration all along and in fact, there was a proposal to grant the relief claimed by the respondents 2 to 9, however, the same was dropped only on 15.2.2012. Therefore, the Tribunal held that the objection regarding the limitation had no substance. After overruling the objection as to the issue of limitation, the learned Tribunal adverted to the various submissions of the parties and finally concluded in favour of the respondents 2 to 9 as per the reasoning found in para 9 and 10 of the order, which is extracted herein below:

"9. All the applicants were selected through the Railway Recruitment Board to the post of Traffic Apprentice to be absorbed as Station

Masters in the scale of Rs.455-700 and they all joined prior to 15.05.1987, the date on which orders were issued implementing the Pay Commission recommendations merging the pay scales of Rs.455-700 and 425-640 into one common scale of Rs.1400-2300, though that merger was to take effect from 01.01.1986. The Railway Board Memo dated 15.5.1987 had also dealt with the case of those who were under training on the date of notification of IV Pay Commission and it has been ordered that they should be charged against the post for which they were selected and their seniority should be interpolated with the grade they were selected. Thus it becomes clear that all the applicants who were under training prior to 15.5.1987 were to be absorbed in the scale of Rs.455-700 only. Since this scale was not in existence at the time of their absorption in the post of Station Masters it would necessarily imply that the applicants ought to have been notionally fixed in the pay scale of Rs.455-700 and thereafter fitted into the new scale of Rs.1400-2300. This is the only option possible since there is no direct recruitment envisaged in the scale of pay of Rs.1400-2300 since for those Traffic Apprentice appointed after 15.5.1987 the scale of Rs.1600-2660 was applicable. It is also to be borne in mind that the merger of scale of Rs.425-640 with the scale of Rs.455-700 into common scale of Rs.1400-2300 is a fortuitous occurrence consequent to the implementation of the IV Pay Commission recommendation. The direct recruits, recruited through Railway Recruitment Board, for the specific absorption in the scale of Rs.455-700 can only be placed immediately below those who were already holding regular position in the scale of Rs.455-700 and above those employees who were in the pay scale of Rs.425-640 as on 15.5.1987. This is exactly the position which has been communicated by the Chief Personnel Officer, Southern Railway, in the communication dated 12.6.2014 dealing with the representation of T.Sathiaraj who is one of the applicants in this OA.

"10. We are of the considered view that the position stated in the above communication is the correct position concerning the question of seniority of the applicants. We find that the reasons cited by the respondents for dropping the earlier proposal mooted in their communication dated 29.12.2011 are not tenable. Para 303 of IREM

Vol.I would be relevant for fixation of seniority of the candidates recruited through the Railway Recruitment Board. Further as pointed out by the applicants, the respondents should deal with the revision of seniority of the applicants in terms of Para 228 of IREM Vol.I. Considering the fact that much time has lapsed, such a revision of seniority would not put those affected by such revision to any monetary loss or reversion if they had already been promoted, other than the revision in their position of seniority and its impact on the subsequent promotions."

As against the above order passed by the Tribunal, the present Writ Petition has been filed by the Union of India.

9. Learned counsel for the petitioner would contend that the order passed by the Tribunal was not sustainable in law and the same was required to be interfered with.

10. However, during the course of arguments, the learned counsel appearing for the respondents 2 to 9 had produced a copy of the proceedings dated 12.6.2014 issued by Headquarters Office of Personnel Branch, Chennai-3 agreeing to rectify the seniority of the 9th respondent herein and to that effect, the said proceedings were issued. According to the proceedings, it has clearly mentioned that the employee was eligible to be fixed in seniority as he claimed. In the circumstances, we do not find anything wrong in the order passed by the learned Tribunal as admittedly representation of 9th respondent has been considered favourably and the other respondents, namely, respondents 2 to 8 cannot be deprived of the same benefit. Moreover, the order passed by the learned Tribunal is a well considered order after taking note of the submissions and facts and circumstances of the case and therefore, we do not find any infirmity in the order in order to interfere with the same.

Accordingly, the Writ Petition fails and it is dismissed as devoid of merits. No costs. Consequently, connected WMP is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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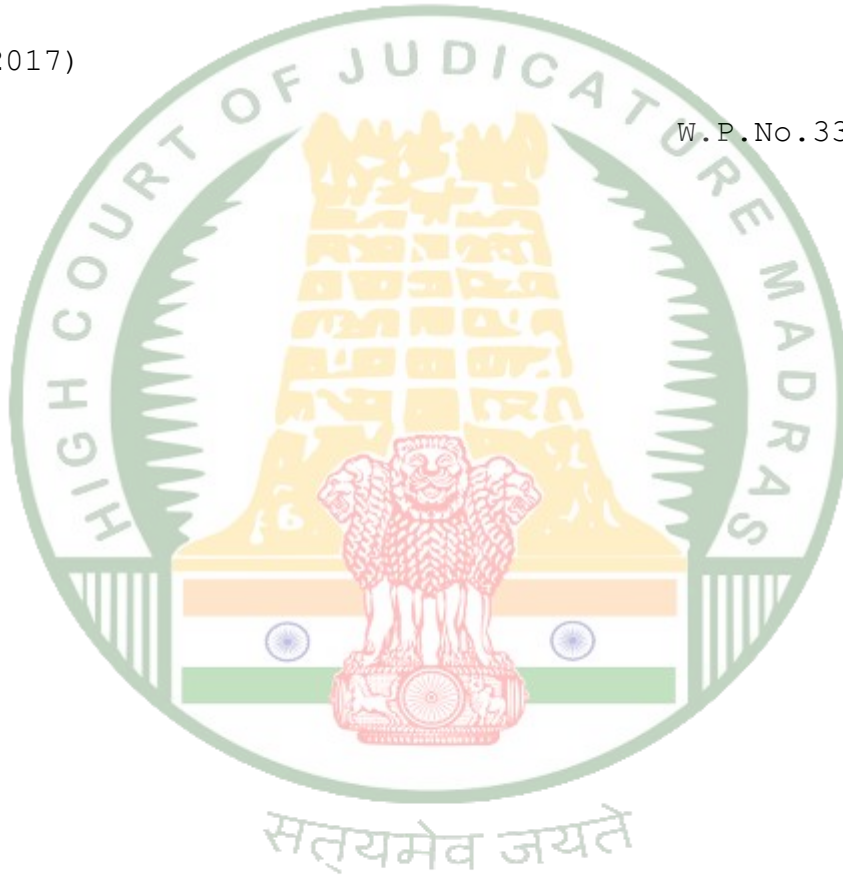
The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.

+1cc to Mr.Subramanian, Advocate, S.R.No.2650

+1cc to Ms.Bhavani subbaroyan, Advocate, S.R.No.2552

KGK (CO)
RS (15/02/2017)

W.P.No.33097 of 2015



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