

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 04.01.2017

Coram

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

W.P.No.34931 of 2015 &
M.P.Nos.1 & 2 of 2015

R.Suresh

...Petitioner

Versus

1. Union of India,
rep. by the General Manager,
Southern Railway,
Chennai-3.

2. The Chief Personnel Officer,
Southern Railway,
Park Town,
Chennai-3.

3. The Chief Administrative Officer,
(Construction),
Southern Railway,
EVR Salai,
Egmore,
Chennai-08.

4. The Deputy Chief Personnel Officer,
(Construction) सत्यमेव जयते
Southern Railway,
EVR Salai, Egmore,
Chennai-08.

5. The Central Administrative Tribunal,
Chennai-104, rep. by
The Registrar,
The Central Administrative Tribunal,
Chennai-104.

...Respondents

Prayer: This Writ Petition is filed under Article 227 of the
Constitution of India, praying for issuance of Writ of

Certiorari Mandamus, to call for the records on the file of the 5th respondent in connection with the order passed in OA 1213/2012 dated 26.6.2015 confirming the order of the 4th respondent in Proc.No.63/1/CN/PT/VI PC dated 16/17.08.2012 and Office Order No.118/2009 dated 18.6.2009 quash the same and direct the respondents to regularize the service of the petitioner with all monetary and service benefits with effect from the date of regular promotion to the post of Office Superintendent/Computer Cell.

For Petitioner : Mr.R.Singaravelan, SC
for M/s.M.Srividhya

For Respondents: Mr.A.P.Srinivas, SSC for R1toR4

ORDER

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

This Writ Petition has been filed against the order of the Central Administrative Tribunal, dated 26.6.2015 passed in O.A.No.1213 OF 2012, dismissing the Original Application filed by the petitioner herein.

2. The petitioner approached the Tribunal with the following prayer:

"To call for the records related to the impugned order No.63/1/CN/PT/VI PC dated 16/17.08.2012 and Office Order No.118/2009 dated 18.6.2009 of Dy.CPO/CN/MS, the 4th respondent and to direct the respondents to restore the pay of applicant."

3. The brief facts, which gave rise to the filing of the above said O.A. and the present Writ Petition, are narrated hereunder:

4. The petitioner was an employee of Southern Railways, having joined as Junior Clerk in the year 1986. He was promoted as Senior Clerk on 20.1.1988 and thereafter as Head Clerk (Adhoc) on 1.7.1992. While working as Head Clerk, the petitioner had responded to the Note put up by the Respondent Railways dated 10.3.1995 inviting the applications for filling up of vacancy of one post of Office Superintendent (Ex.Cadre) in the then Grade pay of Rs.2000-3200. According to the petitioner, on being eligible for consideration of the subject appointment, the petitioner was considered along with the other candidates who responded to the Note and was subjected to regular selection in terms of the extant Rules and on the basis of marks secured by him in the Written Examination, the applicant was declared to be

selected for the said post. Thereafter, he was appointed to the post of Office Superintendent (Computer) and has been working in the same position from 9.5.1995 till date. He was originally fitted in the pay scale of Rs.2000-3200 (IV Pay Commission) and the same came to be revised to Rs.6500-10,500 (V Pay Commission) and presently in the Grade Pay of Rs.4600 in the pay band of Rs.9300-34000.

5. While the matters stood thus, vide proceedings dated 18.6.2009, his appointment to the post of Office Superintendent (Computer) in the then pay scale of Rs.6500-10500 was reviewed and he was brought down to single adhoc promotion in the pay scale of Rs.5000-9000 (V Pay Commission) with Grade Pay of Rs.4200 in the pay band of Rs.9300-34800. The said proceedings which amounted to reversion of the petitioner from his original position after a period of 14 years, was the subject matter of challenge before the Tribunal in O.A.No.1213 of 2012. On behalf of the petitioner, it was contended that no prior notice was issued before issuing the impugned proceedings and the petitioner, having been selected through regular selection and having worked in the same position as Office Superintendent (Computer) from 1995 till date, cannot be reverted to lower grade pay scale. According to the petitioner, once a selection has been conducted and the petitioner became successful in the selection and thereafter, the appointment was issued, which appointment cannot be reviewed without any valid reasons, particularly after a lapse of nearly 14 years.

6. On behalf of the Railways, it was contended that the petitioner was mistakenly granted multiple adhoc promotions bypassing normal channel of promotion with reference to the extant Rules and without reference to the sanction by the competent authority for such appointment and the appointment being not a valid one, it is only a collective action taken by the Railways rectifying the multiple adhoc promotions and such action cannot be faulted with. It was also contended that the promotion to the post of Office Superintendent (Computer) should have the prior approval of the Chief Personnel Officer who is competent authority to approve such adhoc promotions as per Indian Railway Establishment Manual (in short, 'IREM') and the appointment of the petitioner was not approved and therefore, the petitioner cannot be allowed to continue in the said post with the pay scale attached to it.

7. After taking note of the rival contentions of the parties, the learned Tribunal accepted the contentions of the Railways that the petitioner had been granted multiple adhoc promotions and it is contrary to the provisions of IREM. The learned Tribunal further concluded that the order appointing the

petitioner as Office Superintendent (Computer) was issued in the Project Division by the Chief Engineer without the approval of the Chief Personnel Officer and the petitioner factually had been granted promotion as Office Superintendent nearly four years ahead of his turn and such appointment was therefore, rightly reviewed and the impugned order was passed. The learned Tribunal while dismissing the application, also concluded that there was no proper notification giving wider circulation and therefore, the appointment which emerged from such notification, cannot be allowed to continue. In the circumstances, the Tribunal has dismissed the Original Application. As against the said order passed by the learned Tribunal, the present Writ Petition has been filed.

8. Mr.R.Singaravelan, learned senior counsel appearing for the petitioner strenuously argued that the contention of the Department that the petitioner had multiple adhoc promotions when he was appointed as Office Superintendent (Computer) in the year 1995, cannot stand the test of proper scrutiny with reference to the documents and the circumstances under which the appointment was done. The learned senior counsel had taken this Court through the Note dated 10.3.1995 which was published, calling for the applications for filling up vacancy of one post of Office Superintendent (Computer). From the said Note, it can be envisaged that the appointment made pursuant to the Notification is regular selection since applications from all the eligible persons were called for and those who applied in response to the Notification ought to fulfill several requirements as innumarated in the Notification dated 10.3.1995. According to the learned senior counsel, there were not many volunteers in response to the Notification and the petitioner having responded to the Notification and having been selected and eventually appointed, cannot be deprived of his position after a period of 14 years. Moreover, the learned senior counsel also taken this Court through the report 29.09.2010 of the Committee, wherein, majority of the Committee had observed that the appointment of the petitioner was in consonance with the practice and Rules and his appointment was in the interest of administration and hence, was valid.

9. On the other hand, it was the contention of the Railways that the then Chief Engineer who issued the Notification was not the competent authority. When the learned counsel appearing for the Railways was confronted with the question as to what action the Railways had initiated and taken against the said Chief Engineer for having issued the Notification without any authority, there was no response and obviously no action was taken against him.

10. Be that as it may, as far as the petitioner is concerned, he was not to be faulted if the Notification issued by the competent authority or not, particularly that a regular selection was held and he was selected and appointed. Even if there was any procedural lapses, the same cannot affect the accrued right of the petitioner who had worked in the post of the Office Superintendent (Computer) for 14 long years and even till date.

11. From the perusal of the material and pleadings, it could be seen that once the petitioner had been selected and appointed, the contention that the petitioner had multiple adhoc promotions cannot be countenanced in law. The Administration having extracted the work of the Office Superintendent from the petitioner for 14 years and paid pay and allowances admissible for the said post, cannot turn around and pass the impugned order reviewing the appointment to the detriment of the employee. It emerged from the facts and circumstances of the case, that there seem to have some communication gap between two Departments of the Railways. However, the Railways in the name of rectification of the so-called mistake, cannot alter the right accrued to the petitioner particularly in view of the admitted position that the petitioner had no role to play in being appointed as Office Superintendent, unjustly and contrary to the Rules as claimed by the Railways.

12. From the above, this Court is of the view that the impugned order passed by the Railway Administration dated 18.6.2009 bringing down the petitioner to single adhoc promotion, cannot be sustained in law and the same is therefore, set aside. On the same breath, the order passed by the learned Tribunal dismissing the Original Application filed by the petitioner, cannot also be sustained in view of what is stated supra as the learned Tribunal has misdirected itself in coming to the conclusion that the petitioner enjoyed multiple adhoc promotions. In the circumstances, the order of the learned Tribunal is set aside and Railway Administration is directed to restore the position of the writ petitioner which he had before the impugned proceedings were issued on 18.6.2009, with all attendant and consequential benefits which may flow from the present order. The said exercise of restoring the original position of the petitioner should be carried out within a period of three months from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar

//True Copy//

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Sub Assistant Registrar

To

- 1.The General Manager,
Union of India,
Southern Railway,
Chennai-3.
- 2.The Chief Personnel Officer,
Southern Railway,
Park Town,
Chennai-3.
- 3.The Chief Administrative Officer,
(Construction),
Southern Railway,
EVR Salai,
Egmore, Chennai-08.
- 4.The Deputy Chief Personnel Officer,
(Construction)
Southern Railway,
EVR Salai, Egmore,
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5. The Central Administrative Tribunal,
Chennai-104, rep. by
The Registrar,
The Central Administrative Tribunal,
Chennai-104.

+1cc to Mr.Srinivas, Advocate, S.R.No.1566

KS(CO)
RS(08/02/2017)

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