

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.02.2017

Delivered on: 28.03.2017

Coram

The Honourable Mr. Justice K.K.SASIDHARAN
and

The Honourable Mr. Justice V.PARTHIBAN
W.P.No.35301 of 2015

1. The Union of India,
represented by the General Manager,
Southern Railway,
Park Town,
Chennai-600 003

2. The Divisional Railway Manager,
Chennai Division,
Southern Railway,
NGO Annexe, Park Town,
Chennai-600 003.

3. The Senior Divisional Personnel Officer,
Chennai Division, Southern Railway,
NGO Annexe, Part Town,
Chennai-600 003.

... Petitioners

versus

1. G.Rajendran

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

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the entire records of the second respondent in OA No.421 of 2012 and quash the order passed therein dated 27.4.2015.

For Petitioners: Mr. A.P.Srinivas

For Respondents: Mr.L.Chandrakumar for R1

ORDER

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.421 of 2012 dated 27.4.2015 allowing the Original Application filed by the first respondent herein.

2. The first respondent/applicant approached the Tribunal, seeking the following relief:

"To direct the respondents to refix the basic pay of the applicant at Rs.7100/- on par with his junior who have been promoted as passenger guard vide office order No.T/39/2007 with consequential refixation pursuant to the recommendations by the 6th Pay Commission recommendation with all attendant benefits."

3. According to the first respondent/applicant, he was appointed as Ticket Collector on 21.01.1989 and was promoted as Senior Ticket Collector in the pay scale of Rs.1200-2040 in 1995. Thereafter, he was selected and posted as Goods Guard by a newly constituted Selection Committee. After being subjected to training, the first respondent/applicant assumed charge as Goods Guard on 25.4.1997. Since the position of the Goods Guard involves assumption of higher duties and responsibilities, his pay ought to have been fixed under Rule 1313 of Indian Railways Establishment Code which is pari materia to unamended to Rule 22 (C) of Fundamental Rules. Thereafter, the first respondent/applicant was promoted to the post of Passenger Guard on 12.3.2007, however, his pay was not fixed properly. In the circumstances, the applicant submitted a representation for fixation of his pay under Rule 1313 of Indian Railways Establishment Code and also in terms of Railway Board's letter dated 4.2.1991. As there was no response, the first respondent/applicant approached the Tribunal, seeking the relief as extracted supra.

4. The petitioners herein, who are the respondents before the Tribunal, resisted the claim of the first respondent/applicant that as per the Railway Board's instructions, the Ticket Collectors and Goods Guards were not

eligible for the benefit of Rule 1313 (unamended FR 22(C)). It was further contended that the category of Ticket Collector was not feeder grade for the appointment to the post of Goods Guard and it was only a movement from one identical scale to another one in the same pay scale and the same cannot be termed as promotion and therefore, his pay was rightly fixed at the time when he was holding the previous post.

5. In fact, it was contended on behalf of the petitioners that there was a long delay in filing the application that too three years after retirement of the first respondent/applicant, the application ought to be dismissed on the ground of delay.

6. After taking note of the rival submissions of the parties, the learned Tribunal found that the first respondent/applicant was subjected to selection both written examination and interview and thereafter he was subjected to further training. It was also found that under 60% promotional quota for the post of Goods Guard, the category of Ticket Collectors/Senior Ticket Collectors/Commercial Clerks/Senior Commercial Clerks, is eligible for 5% quota, in which case, the contention of the petitioners before the Tribunal that the appointment to the post of Goods Guard, cannot be construed as promotion, was found untenable by the Tribunal. The Circular of the Railway Board dated 24.5.1999, which notified the application of amended FR 22(1)(a)(1) for promotion from certain feeder categories to the promoted post carrying same pay scale, the post of Ticket Collector did not figure at all and therefore, the claim of the first respondent/applicant cannot be countenanced in the light of the said Circular.

7. Be that as it may, the contention of the first respondent/applicant that similar issue arose in O.A.No.717 of 2006 before the Tribunal and the learned Tribunal held that mere omission in the above said Circular to specifically mention certain posts in the feeder category carrying the same scale of pay, cannot be cited as a reason for denying the FR 22(1)(a)(a) benefit to other similarly placed categories. The order passed by the Tribunal in the said O.A., was confirmed up to the Hon'ble Supreme Court and was relied upon by the Tribunal in number of other decisions in identical matters. In such view of the matter, the Tribunal held that the first respondent/applicant was also eligible for the benefit of application of Rule 1313 i.e. FR 22(1)(a)(1) as he was similarly placed like other employees covered under order passed by the Tribunal in O.A.No.717 of 2006. Even otherwise, the Tribunal found that the facts and circumstances would clearly demonstrate

that the first respondent/applicant was entitled to fixation of pay under FR 22(1)(a)(1) as appointment to the post of Goods Guard can only be construed as promotion. However, while accepting the contention of the first respondent/applicant, the Tribunal also felt that there was a delay in filing the original application and therefore, restricted the benefit of direction only in respect of payment of calculation of pension and payment of arrears of pension and not other benefits.

8. As regards the order passed by the Tribunal, the present Writ Petition has been filed.

9. The learned counsel appearing for the petitioners would contend that since the Ticket Collector is not one feeder category for appointment to the post of Goods Guard, the question of FR 22 would not arise at all. He also contended about the maintainability of the Original Application in view of huge delay in filing the application.

10. Per contra, Mr.L.Chandra Kumar, learned counsel appearing for the first respondent/applicant contended that the circumstances, under which the appointment of the first respondent/applicant was made, would unequivocally support the claim of the first respondent/applicant that the subject appointment was clearly one of promotion and cannot be construed anything else, in which event, the first respondent/applicant ought to have been granted the benefit of fixation of pay under FR 22(1)(a)(1). As regards the delay in filing the Original Application, the learned counsel would contend that the denial of proper pay means, there is continuity in the cause of action and as regards the matter relating to pay and pension, the law of limitation need not be strictly adhered to.

11. We gave our anxious consideration to the rival submissions to the parties and perused the materials on record.

12. From the circumstances of the case, as rightly held by the learned Tribunal, the appointment of the first respondent/applicant to the post of Goods Guard can only be construed as one of promotion and therefore, the first respondent/applicant was entitled to fixation of pay on appointment of Goods Guard under FR 22(1)(a)(1), the denial of such fixation is contrary to the Rules and cannot be sustained in law.

13. As regards the delay is concerned, the learned Tribunal itself has accepted the contention of the petitioners and confined the relief only with regard to calculation of pension and payment of arrears of pension. Therefore, we do not find that such approach of the Tribunal suffers from any infirmity in the circumstances of the case.

In the upshot, we are of the view that the impugned order passed by the learned Tribunal does not warrant any interference and the same is confirmed. Accordingly, the Writ Petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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represented by the General Manager,
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4. The Registrar
Central Administrative Tribunal, Madras Bench,
Chennai-600 104.

+1cc to Mr.L.Chandrakumar, Advocate Sr.19131
+1cc to Mr.A.P.Srinivas, Advocate Sr.19346

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sj[co]
srg 26/04/2017