

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 25.01.2017

Delivered on: 24.02.2017

Coram

The Honourable Mr. Justice K.K.SASIDHARAN
and
The Honourable Mr. Justice V.PARTHIBAN
W.P.No.3805 & 3806 of 2015

P.K.Mahesh Rao .. Petitioner in
WP 3805 of 2015

M.Ravichandran ... Petitioner in
WP 3806 of 2015

versus

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

2. The Divisional Railway Manager,
Salem Division, Southern Railway, Salem.

3. The Divisional Personnel Officer,
Salem Division, Southern Railway,
Salem.

4. The Sr.Divisional Personnel Officer,
Palghat Division, Southern Railway,
Palakkad.

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

Prayer: These Writ Petitions are filed under Article 227 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the records pertaining to the order of the 5th respondent made in O.A.Nos.1078 and 1079 of 2011 dated 02.04.2014 and R.A.Nos.23 and 24 of 2014 dated 04.07.2014, quash the same and consequently, direct the respondents to fix the pay of the petitioners in terms of Rule 1313(1)(a)(i) of the Indian Railways Establishment Code on petitioners' promotion to the post of Loco Pilot (Passenger) as shown in the table in Para 8 of of the affidavit filed by the petitioners and to extend all consequential service and pecuniary benefits.

For Petitioners : Mr. L.Chandrakumar

For Respondents : Mr.V.G.Sureshkumar

ORDER

V.PARTHIBAN, J.

These three Writ Petitions arise out of common order passed by the Central Administrative Tribunal (in short, ' the Tribunal'), Madras Bench in O.A.Nos.1078 and 1079 of 2011 dated 02.04.2014 and R.A.Nos.23 and 24 of 2014 dated 04.07.2014 filed by the petitioners herein.

2. The petitioners herein have approached the Tribunal by filing the above said Original Applications, seeking the following relief:

"To call for the records related to the impugned order No.J/P/OA-1014/2009 dated 26.5.2010 made by the 4th respondent and to quash the same and further to direct the respondents to modify the basic pay of the applicant with reference to table charted out elsewhere in this application in terms of Rule 1313(1)(a)(1) (FR 22) of the Establishment Code duly declaring those provisions in letters dated 14.7.1993 and 9.10.2004 denying fixation of pay on the pretext of identical scales of pay and on the pretext of non-functional posts, as null and void and to pass such other order/orders as this Hon'ble Tribunal may deem fit and proper and thus render justice."

3. The petitioners were working as Goods Drivers in the pay scale of Rs.5000-8000 at the relevant point of time and they were promoted as Senior Goods Drivers in the pay scale of Rs.5500-9000 and thereafter, they were promoted to the post of Passenger Driver in the same scale of pay vide proceedings dated 16.6.2001. According to the petitioners, on promotion as Passenger Driver Grade II (Loco Pilot) they were denied proper fixation of pay in terms of Rule 1313 of Indian Railway Establishment Code which is parimateria to FR 22(1)(a)(1).

4. According to the petitioners, at the time of promotion to the post of Passenger Driver, they were subjected to departmental selection with reference to Chapter II of the Indian Railway Establishment Manual and hence denial of fixation of pay on the promotion, is contrary to the Rule position. According to the petitioners, some other similarly placed employees were granted fixation of basic pay in terms of Rule 1313 of the Railway Establishment Code. Therefore, fixation of

improper pay for the petitioners was in violation of Articles 14 and 16 of the Constitution of India.

5. Per contra, on behalf of the Railways, it was contended that the post of Passenger Driver carried identical scale of pay Rs.5500-9000 and since they were promoted to identical scale of pay, their pay was fixed under Rule i.e. 1313 (i)(a)(1) i.e. FR 22(1)(a)(1). The petitioner were allowed to draw their pay as Senior Goods Driver, even after they were promoted as Passenger Drivers.

6. After taking note of the rival submissions of the parties, the learned Tribunal dismissed the Original Applications. The reasons set forth for dismissal of the Original Applications are found in para 7 of the order, which reads as under:

"7. The main contention of the applicants is that when they have been promoted from the post of Senior Goods Drivers to Passenger Drivers which carries higher duties and responsibilities, their pay ought to have been fixed under Rule 1313(FR22(1)(a)(1)). Whereas, the plea of the respondents is that the pay scale of Senior Goods Drivers and Passenger Drivers is one and the same and when the applicants were promoted, the pay drawn by them will remain unchanged in terms of the provisions contained in Rule 1313(FR22(1)(a)(1)), as per para 3 and 6 of the letter dated 27.1.1993 and as per para 4 of the letter dated 14.7.1993 of the Railway Board. It is also seen from the reply that as per the clarificatory letter of the Railway Board dated 14.7.1993, only once the benefit of fixation under Rule 1313(FR22(1)(a)(1)) is admissible and that the applicants have availed of the said benefit of higher pay fixation when they have been promoted from Goods Driver to Senior Goods Drivers. According to them, they are entitled to pay fixation as Passenger Drivers under Rule 1313(FR 22(1)(a)(2)-R-II which have been granted to them."

7. As against the above order passed by the Tribunal, the present Writ Petitions have been filed.

8. Shri L.Chandrakumar, learned senior counsel appearing for the petitioners strenuously contended that the benefit of fixation of pay under FR 22(1)(a)(1) ought to have been granted while the petitioners were promoted as Passenger Drivers since the post of Passenger Driver was carrying higher duties and responsibilities and therefore, they ought to have applied the provisions of Rule 1313 (1)(a)(i) of the Railways Establishment

Code which is equivalent to FR 22(1)(a)(1), but on the contrary, the appointment from Goods Driver to Senior Goods Driver though in the higher pay scale, there was no involvement of any higher responsibility or change of duty since both posts of Goods Driver and Senior Goods Driver have the same responsibility and duties.

9. On behalf of the Railways, it was contended that further to the instructions dated 14.7.1993 which were impugned in the Original Applications that when the employees promoted from Goods Driver to Senior Goods Driver in the upgraded pay scale, their pay scale had been fixed in terms of Rule 1313(1)(a)(i) and FR 22 (1)(a)(1).

10. In reply, it is clarified that only one such fixation is admissible and thereafter for further promotion, the same benefit will not be admissible. For better appreciation of the contentions raised by the learned counsel appearing for the Railways, the relevant paragraphs 3, 4 of the Railway Board's instructions dated 14.7.1993 are extracted herein below:

" 3. It has further been decided that promotion of staff in the lower grade to these newly upgraded posts in the Traffic Transportation and Transportation (Power) Departments designated as "Senior" will be on the basis of Seniority-cum-suitability. For example, promotion of Goods Guard and Shunters in the scale Rs.1,200-2,040 as Sr.Goods Guard and Sr.Shunter respectively in the scale of Rs.1,350-2,200 will be on the basis of seniority-cum-suitability. Benefit of fixation under Rule 1313-(FR.22) (i)(a)-R.II will be admissible for such promotion.

4. Further indication of the upgraded staff in their normal promotional grades in the identical scale of pay will be as per the existing classification of posts. For example, lateral induction of Sr.Goods Drivers, scale of Rs.1,600-2,660 and Sr.Goods Guard, scale Rs.1,350-2,200 as Passenger Driver and Passenger Guard respectively in the identical grades will be by existing process of selection. In these case however, pay will be fixed in terms of Rule 1313 F.R.22(i)(a)(2)-R.II and the benefit of fixation under Rule 1313 F.R.22(i)(a)(1) will not be admissible."

11. From the above, it could be seen that fixation as done by the Railways in respect of the petitioners has been in terms of the Railway Board's instructions and the petitioners having enjoyed the higher fixation of pay in terms of the relevant provisions of the Railway Establishment Code, cannot agitate that their pay ought to be fixed once again in the next

promotion to the post of Passenger Driver in terms of Rule 1313 FR.22(i)(a)(1), as such benefit if conferred, will amount to granting double benefit which is not contemplated under the Rules.

12. Further, it could be seen that the Railway Board's instructions which were issued on 14.7.1993, were in vogue all along and the same was not put to challenge on earlier point of time.

13. Be that as it may, the fact remains that either in the position of the Senior Goods Driver or in the Passenger Driver, the petitioners had the benefit of fixation of pay under Rule 1313 F.R.22(i)(a)(1) and therefore, further claim for application of the same provisions in the case of promotion, cannot be countenanced both in law and on facts. Therefore, the learned Tribunal has rightly dismissed the Original Applications.

14. In fact, the petitioners have filed Review Applications against the order passed by the Tribunal. But the Review Application also came to be rejected as devoid of merits as there was no error apparent on the face of the record in the orders passed by the Tribunal in the Original Applications.

15. We gave our anxious consideration to the rival submissions of the learned counsel and examined the Rule position and the Railway Board's instructions and other materials available on record.

16. We are unable to persuade ourselves with the contentions raised by Shri L.Chandrakumar, learned senior counsel for the petitioners that the petitioners were entitled to fixation of pay on their promotion as Passenger Goods Driver in terms of Rule 1313 FR 22(i)(a)(1) in view of the fact that they had already had such fixation when they were promoted from the post of Goods Driver to the post of Senior Goods Driver after restructuring of the post. In fact, the learned counsel appearing for the Railways brought to our attention to P.B.Circular No.153/2003, dated 9.10.2003, wherein, it is stated that as clarified in para 3 of the Circular that hence forth benefit of fixation of pay under FR.22(1)(a)(1) will no longer available in the case of movement from lower grade to higher grade in the Non-functional situations when there is no change in duties as in the case of movement from Goods Guards to Sr.Goods Guards and Goods Drivers to Sr.Goods Drivers etc. However, the benefit of fixation of pay under Rule FR-22(1)(a)(1) will be admissible in the cases of functional promotions such as promotion from Sr.Goods Guards to Passenger Guards and Sr.Goods Drivers to Passenger Drivers etc. though in identical scale of pay. This clarification clearly demonstrate the fact that till 2003, Railway Administration had been applying the

Board's instructions dated 14.7.1993 and the present promotion of the petitioners is from the post of Sr.Goods Driver to the post of Passenger Driver. But the crux of the matter is whether the appointment from the post of Goods Driver to Sr.Goods Driver or promotion from the post of Sr.Goods Driver to Passenger Driver, the instructions would contemplate that admissibility of fixation of pay under FR.1313 FR.22(i)(a)(1) can only be once. In the case on hand, admittedly, the petitioners have enjoyed the fixation of pay under Rule 1313 FR.22(i)(a)(1) and therefore, they cannot seek to enjoy second fixation of pay under the same provisions for their next promotion. Such benefit is not contemplated or envisaged either in the instructions/Circular of the Railway Board or in the Rules. Therefore, we do not see any infirmity in the order passed by the learned Tribunal in the orders passed both in the Original Applications and the Review Applications.

Accordingly, the Writ Petitions fail and they are dismissed.
No costs.

-s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. Union of India,
rep. by the General Manager,
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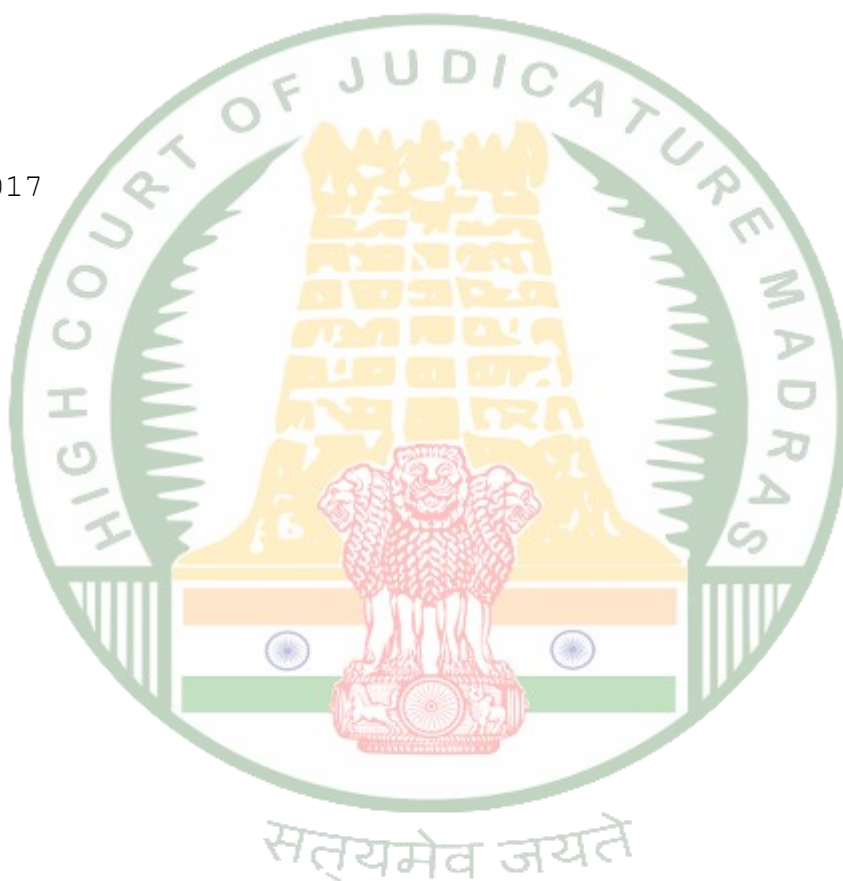
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+1 cc to M/s.V.G.Sureshkumar Advocate sr 12395
+1 cc to M/s.L.Chandrakumar Advocate sr 12032

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