

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 27.02.2017
Coram

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

W.P.No.9798 of 2015

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

2. Chief Personnel Officer,
Southern Railway,
Park Town,
Chennai-600 003.

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

.. Petitioners

Versus

1. M.Gurupatham

2. 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 issuance of Writ of Certiorari, to call for the records relating to the order dated 28.3.2014 made in O.A.No.620 of 2011 on the file of the Central Administrative Tribunal, Madras Bench and to quash the same.

For Petitioners : Mr.M.Udhayakumar

For Respondents : Mr.Y.Kavitha for
M/s.Giridhar & Sai for R1

ORDER

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

This Writ Petition has been filed against the order passed by the learned Central Administrative Tribunal (in short, 'the Tribunal'), Madras Bench, dated 28.3.2014 in O.A.No.620 of 2011 allowing the application filed by the first respondent herein.

2. The first respondent herein, who was the applicant before the Tribunal, has filed the above said Original Application, seeking the following relief:

"(i) to set aside the order SA/P.353/O.A.1093/10, dated 22.11.2010 passed by the 3rd respondent and quash the same;

(ii) to direct the respondents to restore and re-fix the pay of the applicant as Rs.847/- in the scale of Rs.775-1025 w.e.f. 14.12.1991 with arrears of pay and allowances and all other consequential benefits."

3. For the sake of clarity, the first respondent employee will be referred to as 'the applicant' while the petitioners as 'the official respondents'.

4. The applicant joined Southern Railway as Khalasi (Temporary status) in 1986 and subsequently he was appointed as Casual Labour Khalasi in the pay scale of Rs.750-940. In the year 1988, he was appointed as Gangman and thereafter, promoted to the post of Senior Gangman and presently working as Senior Gatekeeper. When the applicant was posted as Gangman in the pay scale of Rs.775-1025, he was drawing the basic pay of Rs.811/- with effect from 10.7.1988. While so, his pay was suddenly reduced in the post of Gangman at Rs.810/- in the pay scale of Rs.750-940 with effect from 18.12.1991. According to the applicant, the post of Gangman carries pay scale of Rs.775-1025 whereas, his pay was fixed in the lower pay scale of Rs.750-940. The applicant approached the Tribunal in O.A.No.1093 of 2010, seeking for proper fixation of his pay and the Tribunal in the said Original Application, has given a direction to the official respondents therein, to dispose of his representation. Pursuant to the direction of the Tribunal, by impugned order dated 22.11.2010, the claim of the applicant came to be rejected. Hence, the applicant approached the Tribunal once again by filing the present O.A., challenging the impugned order of rejection of his claim and for consequential direction for fixation of his pay.

5. Before the Tribunal, it was contended on behalf of the applicant that similarly placed persons who were appointed like the applicant whose pay scale was fixed in the pay scale of Rs.775-1025 in the post of Gangman and the Tribunal allowed the similar application in O.A.No.1424 of 2010 on the basis of the judgment of the Karnataka High Court in O.A.No.27604 of 2002. The order passed by the Tribunal in O.A.No.1424 of 2010 has also been implemented by the official respondents.

6. Per contra, the claim of the applicant was resisted by the official respondents on the ground that the case of the applicant cannot be compared since before his appointment as Gangman, he was originally working as a Casual Labourer. In fact, after his appointment as Gangman with effect from 1.4.1991, he was sent back to his original work as temporary status Casual Labourer Khalasi on 18.12.1991 and therefore, his pay had to be fixed at Rs.750-940 with effect from 18.12.1991. At that time, no dispute was raised by the applicant when his pay was revised. As regards comparison of other similarly placed persons, it was contended on behalf of the official respondents that those persons were working as regular Gangmen and not reverted like the applicant herein for a spell and therefore, their pay scale which was sought to be reduced, was found to be invalid by the Tribunal. The applicant cannot compare his case with that of others as it is admitted case that the applicant's pay scale has to be revised on the basis of his reversion to the lower pay scale during the relevant period. In fact, a detailed counter has been filed setting out these facts as to how the case of the applicant was different from others. However, the learned Tribunal without taking note of the submissions made on behalf of the official respondents, simply relied upon its earlier order dated 27.11.2013 and allowed the Original Application. As against the order, the present Writ Petition has been filed by the official respondents.

7. Shri M.Udhaya Kumar, learned counsel appearing for the respondents would strenuously contended that the learned Tribunal misdirected itself in placing the reliance upon its earlier order dated 27.11.2013 in O.A.No.1424 of 2010 without observing that the applicant was different and he already suffered reversion in between, which resulted in fixation of his pay to the lower pay scale unlike the other employees who got the benefit from the orders passed by the learned Tribunal and the Karnataka High Court.

8. The learned counsel appearing for the official respondents has taken us through all the materials and pleadings on record, particularly, the learned counsel appearing for the official respondents, has drawn our attention to para 9 of the

reply statement, which is extracted below:

"9. It is humbly submitted that by letter no.P (L) 407/Rules/Vol.IV dated 07.10.1988 (PBC 194/88) it was advised by the Chief Personnel Officer, Southern Railway, Chennai that casual labourers in Construction Projects who are temporarily utilized for maintenance of track may also be given the scale of pay of regular Gangman of Rs.200-250/Rs.775-1025 on attaining temporary status but only for the period during which they are being utilised on the open line for maintenance of track. A true copy of this letter dated 7.10.1988 is produced herewith and marked as Annexure-R-2. Accordingly, the pay of the applicant was fixed in scale Rs.775-1025 with effect from 11.4.1986 to Rs.787/- as he was utilised for track maintenance work. He was drawing pay at Rs. 847/- in scale Rs.775-1025 with effect from 1.4.1991. However, on 18.12.1991, the applicant was sent back to his original work as temporary status Khalasi in scale Rs.750-940; and hence his pay as temporary status attained casual labour Khalasi was fixed at Rs.810/- in scale Rs.750-940 with effect from 18.12.1991. While the applicant was thus working as temporary status attained casual labour Khalasi at pay Rs.822/- in scale Rs.750-940, he was screened and absorbed as Temporary Gangman in scale Rs.775-1025 with effect from 2.12.1992; and his pay as Gangman was fixed at Rs.823/- in scale Rs.775-1025 with effect from 2.12.1992."

9. From the contents of the above reply statement, it can be seen that in between appointment as Gangman, the applicant was brought down to lower pay scale for some time which resulted in fixation of his pay to his disadvantage. In fact, such fixation has been authorized by the instructions of the Southern Railway. Therefore, the learned counsel contended that the order allowing the Original Application by the learned Tribunal, cannot stand to test of proper judicial scrutiny and the same is liable to be set aside.

10. On the other hand, Ms.Y.Kavitha, learned counsel appearing for the applicant would contend that the difference sought to be made between the applicant and the other employees who got the benefit was made only for the purpose of case and the same cannot be a valid test for bringing down the pay of the applicant.

11. We have given our anxious consideration to all the issues that were raised before the Tribunal and before this

Court and also gone through the relevant decisions passed by the learned Tribunal and perused all the materials available on record.

12. We are convinced on the basis of the materials placed on record, that the case of the applicant cannot be compared to other employees who had the benefit of the orders in their favour by the learned Tribunal and the by the decision of the Karnataka High Court as those persons did not suffer any reversion during their appointment as Gangman and even otherwise, they were permanent employees on regular basis in their earlier appointment as Gangman. In the instant case, it is admitted fact that the applicant suffered reversion during his appointment as Gangman which resulted in fixation of his pay in the lower pay scale. In such view of the order, we are of the view that the order passed by the learned Tribunal, cannot stand and it is liable to be set aside.

13. In view of the above, the order passed by the learned Tribunal, dated 28.3.2014 in O.A.No.620 of 2011 is hereby set aside and consequently, the Writ Petition is allowed. No costs.

-s/d-

Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

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To

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

2. Chief Personnel Officer,
Southern Railway,
Park Town,
Chennai-600 003.

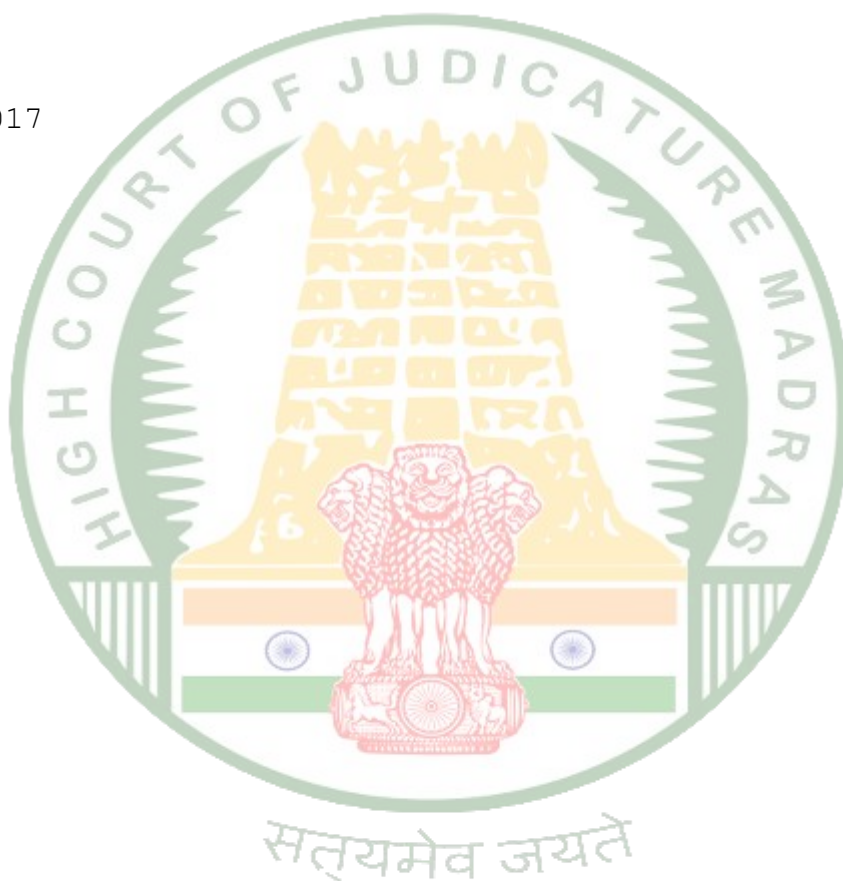
3. The Divisional Personnel Officer,
Salem Division,
Southern Railway,
Salem.

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

+1 cc to Udayakumar Advocate sr 12400
+1 cc to M/s.Giridhar & Sai Advocate sr 12821

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