

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.07.2017

PRONOUNCED ON:25.07.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition Nos.12868 and 9867 of 2013 and
M.P.No.1 of 2013 in W.P.No.9867 of 2013

W.P.No.12868 of 2013:-

O.K.Krishnadas ... Petitioner

vs

1.Air Officer Personnel,
Air Headquartres,
Vayu Bhavan,
New Delhi 110106
Representing Union of India.

2.Commandant,
407, AF Station Redfields,
Coimbatore - 641 018

3.L.Chammunni

4.Central Administrative Tribunal,
Rep. By its Registrar,
High Court Compound,
Chennai - 600 104.

सत्यमेव जयते .. Respondents

Prayer:- Writ Petition has been filed under Article 226 of the Constitution of India for a writ of certiorarified mandamus caling for the records relating to order of the fourth respondent Tribunal dated 08.08.2011 in O.A.No.94 of 2010 and quash the same and to direct the respondents to promote the petitioner to the post of MTD Selection Grade w.e.f 30.08.2007 with arrears of pay and allowances and all other consequential benefits.

For Petitioner : Mr.P.V.S.Giridhar
For R.1 : Mr.S.Arockiam, CGSC
For R.2 : No Appearance
For R.3 : Not ready in notice
For R.4 : Tribunal

W.P.No.9867 of 2013:-

1.Air Officer Personnel,
Air Headquarters (VB),
New Delhi - 110106.

2.The Commandant,
407 Air Force Station,
Redfields,
Coimbatore - 641 018.

.. Petitioners

vs

1.The Registrar,
Central Administrative Tribunal
Madras Bench,
High Court Compound,
Chennai - 600 104.

2.O.K.Krishnadas

3.L.Chammunni

.. Respondents

Prayer:- Writ Petition has been filed under Article 226 of the Constitution of India for a writ of certiorari caling for the records of the first respondent and quash the order passed by the first respondent in O.A.No.94 of 2010 dated 08.08.2011.

For Petitioners : Mr.S.Arockiam, CGSC
For R.1 : Tribunal
For R.2 : Mr.P.V.S.Giridhar
For R.3 : Not ready in notice

COMMON ORDER

(Order of the Court was made by G.Jayachandran.J.,)

The writ petitions are filed challenging the order of the Central Administrative Tribunal passed in O.A.No.94/2010 dated 08.08.2011, directing the respondents to promote the petitioner in W.P.No.12868 of 2013 (O.K.Krishnadas), to the post of MTD Special Grade on notional basis with effect from the date of promotion of his junior, the third respondent in W.P.No.12868 of 2013 (L.Chammunni) i.e., 31.08.2007, without payment of arrears.

2.The Department challenges the Central Administrative Tribunal order in toto in W.P.No.9867 of 2013. O.K.Krishnadas, challenges the impugned order in respect of denial of arrears alone in W.P.No.9867 of 2013.

3.The said order of the Central Administrative Tribunal is impugned before this Court by the Department, for the reason that the Tribunal wrongly understood the fact and the rule position and had erroneously held that the petitioner in W.P.No.12868 of 2013 (O.K.Krishnadas), was appointed as MTD Grade II (redesignated as MTD ordinary Grade) on 07.05.1983, whereas the third respondent in W.P.No.12868 of 2013 (L.Chammunni) was appointed to the post of MTD - Grade II on 15.11.1983 therefore, O.K.Krishnadas was senior to L.Chammunni, in the initial appointment itself. Whereas O.K.Krishnadas challenges the impugned order on the ground that having found his seniority has been overlooked the denial of arrears on the principle of 'no work no pay' is erroneous.

4.A perusal of the records reveal that, O.K.Krishnadas was initially appointed in 33rd Wing, Air Force as Lascar on 11th August 1981 and thereafter, he was appointed as MTD-II (Re-designated as MTD Ordinary Grade) in same unit, on 7th May 1983. L.Chammunni was initially appointed as MTD-II (Re-designated as MTD Ordinary Grade) in Army on 20th June 1973. O.K.Krishnadas and L.Chammunni were posted to AFAC (407 Air Force Station) as MTD-II (Re-designated as MTD ordinary grade) on 30th August 1985 and 15th November 1983 respectively. Since, MTD cadre was unit controlled at that time and seniority/promotions in the cadre was maintained/effectuated locally by various units of the IAF, as per seniority rule, past service rendered by an individual prior to joining a new unit, on transfer/compassionate ground, cannot be counted for seniority purpose in new unit. Accordingly, L.Chammunni was placed in higher seniority in AFAC, based on his date of joining in the unit (AFAC). O.K.Krishnadas and L.Chammunni got promotion to the grade of MTD-I (Re-designated as MTD Grade-II) at AFAC on 1st May 1994 and 1st March 1994 respectively on the basis of unit seniority.

5.The comparative chart furnished by the learned counsel for the petitioner reveals that, O.K.Krishnadas who was appointed as Lascar in the 33rd Wing, Air Force on 11.08.1981 was promoted to the post of MTD Grade II (Re-designated as Ordinary Grade) on 07.07.1983 in the same unit. Later, on his request, he was transferred to AFAC, a different unit. As per the Rule in force, on unit transfer, O.K.Krishnadas's seniority has to be reckoned from the date of joining in the new unit i.e., 30.08.1985. Later, in the year 1996, vide MOD Letter No.PC 1(1)/94/D(Civ-1) dated 05.12.1996, the department has introduced centralised three grade structure. L.Chammunni who joined AFAC on 15.11.1983 much earlier to O.K.Krishnadas has been positioned at 162 rank. Based on the said seniority, L.Chammunni was promoted to MTD Special Grade on 03.08.2007. Eventually, L.Chammunni also retired on 31.08.2009, on attaining the age of superannuation. It has so happened in the circular of Air Force Head Quartres dated 12.08.2008 while indicating the seniority position the name of O.K.Krishnadas has been erroneously placed above L.Chammunni. This error had crept in while revising the seniority list in view of taking back the introduction of three grade structure to 01.08.1993 instead of 05.12.1996. It was due to the said error, O.K.Krishnadas had been shown at 234th rank and L.Chammunni had been shown as his junior at 278th rank which is factually and legally incorrect. This error has been found and rectified while preparing seniority list on introduction of Four Grade centralized structure in the civilian MTD cadres structure vide Ministry of Defence letter PC (1)(1)/94/D (Civ-1) dated 09.04.2001.

6.While Air HQ/29049/363/2/PC-4 dated 29.04.1986 under clause 2(a)(b) clearly lay down the seniority for Group C and D unit controlled civilians transferred on compassionate grounds or on mutual basis will be counted from the date they report to the new unit and admittedly the date of reporting to duty by L.Chammunni as much prior to the third respondent in W.P.No.12868 of 2013, the order of the first petitioner in W.P.No.9867 of 2012 vide Air HQ/23071/Prom/MTD/PC(DPC) dated 20.07.2009 is legal and valid. The corrected seniority has been restored, in which, O.K.Krishnadas was placed at 17th rank and L.Chammunni who is his senior was placed at 14th rank. Therefore, it is L.Chammunni senior to O.K.Krishnadas and O.K.Krishnadas cannot take undue advantage of the error crept due to inadvertence which has been found and corrected subsequently.

7.Tribunal has failed to appreciate the corrected factual and legal position vide Ministry of Defence letter PC (1)(1)/94/D (Civ-1) dated 09.04.2001. Hence, the order of the Tribunal is liable to be set aside.

8.In the result, the order passed by the Central Administrative Tribunal in O.A.No.94/2010 dated 08.08.2011 is set aside W.P.No.12868 of 2013 is dismissed and W.P.No.9867 of 2013 is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jbm
To

1.Air Officer Personnel,
Air Headquarters,
Vayu Bhavan,
New Delhi 110106
Representing Union of India.

2.Commandant,
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Coimbatore - 641 018.

3.The Registrar,
Central Administrative Tribunal,
High Court Compound,
Chennai - 600 104.

+ 2 ccs to Mr.Giriathar, Advocate Sr.52373
+ 1 cc to Mr.S. Arockiam, Advocate SR.52479

W.P.Nos.12868 & 9867 of 2013

SK(CO)
Eu 24.08.17

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