

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on: 27.02.2017

Delivered on: 28.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. No.13206 of 2013

M.Ekambaram

.. Petitioner

Vs

1. Union of India,
Rep. By the Secretary to Government of India,
Ministry of Defence, South Block, DHQ PO,
New Delhi - 110 011.
2. The Director General of Military Training (MT-7),
General Staff Branch, A-Wing, Sena Bhavan,
Integrated Headquarters of Ministry of Defence (Army),
DHQ PO, New Delhi-110 011.
3. The Commandant,
Officers Training Academy,
St. Thomas Mount, Chennai - 600 016.
4. The Registrar,
Central Administrative Tribunal,
Chennai Bench, High Court Campus,
Chennai - 600 104.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the 4th respondent in its order dated 12.03.2013 in O.A.No.933 of 2011, quash the same.

For Petitioner : Mr.L.Chandrakumar
for Mr.D.Prabhu Mukunth Arunkumar
For RR1 to 3 : Mr.S.R.Sundaram
R4 : Tribunal

ORDER

V.PARTHIBAN, J.

This petition has been filed against the order passed by the Central Administrative Tribunal, Chennai Bench (in short, 'the Tribunal') in O.A.No.933 of 2011 dated 12.03.2013, dismissing the application filed by the petitioner herein.

2. The petitioner has approached the learned Tribunal, seeking for the following relief:-

"To call for the order passed in the impugned communication dated 30.03.2011 quash the same and direct the 1st respondent to grant Group C skilled grade pay scale (revised scale of Rs.3050-4590) to the appellant's post of Ferrier on par with Nalband in RVC with effect from 13.01.1994 with all consequential service and attendant benefits."

3. According to the petitioner, he was appointed as GROOM on 09.12.1988 in Group 'D' category. The post of GROOM was re-designated as FERRIER on 13.01.1994. According to the petitioner, the post of FERRIER and the post of NALBAND in Remount and Veterinary Corps (hereinafter referred to as 'RVC') carry the same functions and duties and therefore, he prayed for parity in pay scale as given to NALBAND in RVC.

4. In this connection, the petitioner has represented to the Authorities concerned and since there was no reply to his representation, the petitioner was constrained to approach the Tribunal in O.A.No.139 of 2005 and the Tribunal, vide its order dated 10.01.2006 disposed of the Original Application, with the following observations:-

"The role of the Tribunal in determining equivalence of posts or award of new scale of pay for different posts is extremely limited. Accordingly, we are of the considered view that the declaration of equivalence or raising the pay scale for the post of Ferrier is best left to the respondents to seek such technical/professional advice they may choose to. Even otherwise, we find in the communication dated 21.01.2003 that the MOD have advised that if there is any merit in the proposal, the same may be referred to the concerned administration section and their Integrated Finance. It is open to the respondents to take recourse to this action if they are so advised."

O.A. is disposed of on the above lines with no order as to costs".

5. In pursuance of the above directions, the petitioner renewed his representation. But the same was not acceded to as conveyed in the communication of the competent Authority dated 01.05.2006. Notwithstanding the rejection, it appears that when the petitioner renewed his representation after VI Pay Commission, but finally the Authority concerned passed an order on 30.03.2011 stating that the parity of pay scale as between FERRIER and NALBAND in RVC was not recommended by the VI Pay Commission. The said order of rejection dated 30.03.2011 was the subject matter of challenge in the present OA.

6. Before the learned Tribunal, it was contended on behalf of the petitioner that both the subject posts were discharging identical duties and functions and therefore, the same cannot have different set of pay scales. In fact, the third respondent has submitted a detailed statement of case, supporting the claim of the petitioner.

7. Per contra, the claim of the petitioner was sought to be resisted by the official respondents that the pay scale of Rs.3050-4590 [pre-revised] granted to the post of NALBAND of RVS on the basis of recommendations of the Expert Classification Committee, while there was no such recommendations in respect of the post of FERRIER in the office of the third respondent.

8. After taking note of the rival submissions, the learned Tribunal dismissed the application. On the basis of the reasons as set out in para 7 of the order, which is extracted below:-

"We have heard the learned counsel for both sides and carefully perused the documents available on record. The grievance of the applicant is that he should be granted the same pay scale as that of Nalband in RVC. The respondents have referred the matter to the integrated finance division of their Ministry. There was no specific recommendation of the integrated finance division of the Ministry of Defence for granting the same scale to the Ferrier as that of Nalband in RVC. Even the 6th Pay Commission has also not recommended anything in this regard. Further grant of particular pay scale to a particular post is the duty of expert body like the pay scale to a particular post is the duty of expert body like the pay commission who have got expertise in the field and Courts/Tribunal cannot grant a particular scale of pay for a particular post."

9. As against the above order passed by the Tribunal, the present writ petition has been filed.

10. Mr.L.Chandrakumar, learned counsel appearing for the petitioner would strongly contend that both the posts of FERRIER and NALBAND are one and the same and he had taken us through the definitions of both the posts contained in The Law Lexicon. As could be seen from The Law Lexicon, the definition and description of the posts in question, is one and the same, but there were not enough materials placed before us to come to a categoric conclusion as to the nature of duties to be performed in respect of the persons who were employed in both the posts.

11. Be that as it may, it should also be seen that the third respondent herein has made out a strong case for justifying the claim of the petitioner. Therefore, there is considerable force in the contention raised by Mr.L.Chandrakumar, learned counsel for the petitioner. At the same time, we should be conscious of the fact that in the matter of parity of pay scale, the Court cannot straight away recommend any particular pay scale that should be made applicable to any post. In such view of the matter, the learned Tribunal rightly dismissed the application and therefore, we do not find any infirmity in the order passed by the Tribunal. However, at the same time, we cannot ignore the other effect that there was strong case made out for justifying the claim of the petitioner in the circumstances, as set out in the statement of case dated 25.08.2001. Therefore, while confirming the order passed by the learned Tribunal, we also direct the Authorities concerned to consider the claim of the petitioner afresh on the basis of the statement of case proposed vide third respondent's communication dated 25.08.2001 and take a conscious decision in the matter for maintaining parity between the posts of FERRIER and NALBAND in RVC.

12. We do hope that the competent Authority will take a well considered decision after appreciating all the circumstances of the case on hand and pass detailed orders as expeditiously as possible within a period of six months from the date of receipt of a copy of this order.

13. With the above observation, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

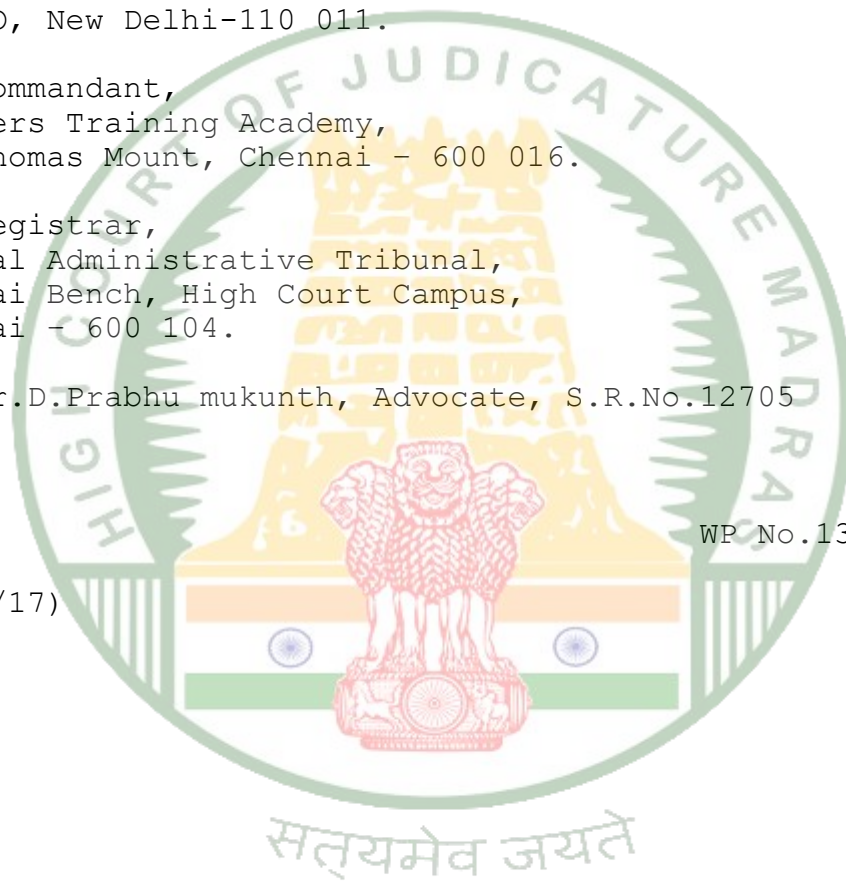
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To

1. The Secretary to Government of India,
Union of India,
Ministry of Defence,
South Block, DHQ PO,
New Delhi - 110 011.
2. The Director General of Military Training (MT-7),
General Staff Branch, A-Wing, Sena Bhavan,
Integrated Headquarters of Ministry of Defence (Army),
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3. The Commandant,
Officers Training Academy,
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4. The Registrar,
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Chennai Bench, High Court Campus,
Chennai - 600 104.

+1cc to Mr.D.Prabhu mukunth, Advocate, S.R.No.12705

sv(co)
rmp(03/05/17)

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