IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12256 OF 2017

Chief Work Manager and ors. ...Petitioners
Versus
Shrirang Narahari Jagtap ...Respondent

Mr. T.J. Pandian for the Petitioners.
Mr. D.N. Karande for the Respondent.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 2nd MAY 2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgement and order dated 8th December 2015 made by the Central Administrative Tribunal (CAT), Mumbai allowing the respondent's O.A. No. 446 of 2012 seeking scale of J.E. II with effect from 1st November 2003 along with all consequential benefits. By the impugned judgment and order, such entire relief has not been granted by the CAT to the respondent. All that the CAT has held is that the petitioners pay to the respondent arrears with effect from 6th July 2012 and to revise the respondent's pension and pensionary benefits on the basis that the respondent was notionally placed in the scale of J.E. II with effect from 1st November 2013. Even this limited relief is challenged by the petitioners in the present petition.

4] Mr. Pandian, learned counsel for the petitioners, submits that the claim of the respondent was based upon cadre restructuring order dated 9th October 2003 made by the Railway Board. He points out that the benefit of such order was available only to regular cadres and not to surplus and supernumerary posts of the Open Line establishments including Workshops and Production Units. He points out that the communication dated 21st December 2002 makes it very clear that the post of Mistry to which the respondent was appointed was "*supernumerary post*" . For this reason, Mr. Pandian submits that the respondent was clearly not entitled to benefit of Railway Board's restructuring of cadres order dated 9th October 2003. He submits that since the CAT has not appreciated this aspect, the impugned judgment and order is liable to be set aside.

5] Mr. D.N. Karande, learned counsel for the respondent, submits that the relief applied for by the respondent for arrears with effect from 1st November 2001 or at least 1st November 2003 has been substantively denied by the CAT. The CAT has only granted arrears from 6th July 2012 and further, directed notional fixation of pay for purposes of awarding of some marginal enhanced pension and pensionary benefits. Mr. Karande submits that admittedly the respondent was promoted as Mistry on 1st November 2001 and therefore, the subsequent order dated 21st December 2002 cannot convert the post to which the respondent was appointed into a supernumerary post. He submits that the order dated 21st December 2002 has not been given and cannot be given a retrospective effect in this manner. He submits that the CAT has considered all the issues, which arose in the matter and there is no jurisdictional error so as to warrant interference under Articles 226 and 227 of the Constitution of India.

6] The rival contentions now fall for our determination.

7] As noticed by the CAT, the main issue is whether the post of Mistry to which the respondent was promoted on 1st November 2001 is to be regarded as a supernumerary post for the purposes of the application of the benefits under the Railway Board's restructuring of the cadres order dated 9th October 2003. Admittedly, the post of Mistry was declared as a supernumerary post by communication dated 21st December 2002. By this date, i.e., on 1st November 2001, the respondent had already been promoted to the post of Mistry. The CAT, in the circumstances, has rightly held that the communication/order dated 21st December 2002 was not sufficient to deny the petitioner benefits of the restructuring of the cadres order dated 9th October 2003.

8] The interpretation suggested by Mr. Pandian might perhaps involve according of '*retrospective effect*' to the communication dated 21st December 2002, when in fact, the communication nowhere states that it is to be operated retrospectively or that it was intended to be operated retrospectively. On such basis, therefore, the CAT, has quite correctly, rejected the contention of the petitioners. There is no jurisdictional error so as to warrant interference under Articles 226 and 227 of the Constitution of India.

9] Besides, we note that in the present case, the CAT has, again, quite rightly, denied the respondent's arrears with effect from 1st November 2003. This is because there was some delay on the part of the respondent in approaching the CAT for reliefs. The major portion of the reliefs applied for by the respondent, therefore, stands denied to the respondent. All that the CAT has granted to the respondent is the benefit of revised scale with effect from 6th July 2012 for purposes of arrears and thereafter, the benefit of revised scale for purpose of notionally computing the benefits for pension etc. Taking into consideration the limited nature of relief granted by the CAT also, we do not consider this to be a fit case for interference.

10] For all the aforesaid reasons, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.) **(ACTING CHIEF JUSTICE)**