

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 2.2.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.7202 of 2017
and
W.M.P.No.7826 of 2017

- 1 Union of India
Rep. by its Secretary
Ministry of Labour and Employment
Shram Shakthi Bhawan
Rafi Marg New Delhi-110 001.
- 2 Employees Provident Fund Organization
Rep. by Central Provident Fund Commissioner
Bhavishya Nidhi Bhawan
14 Bhikaji Cama Place New Delhi-110 066.
- 3 Employees Provident Fund Organization
Rep. by the Additional Central PF
Commissioner-HRM
Bhavishya Nidhi Bhawan
14 Bhikaji Cama Place New Delhi-110 066.
- 4 The Regional Provident Fund Commissioner-I
Employees Provident Fund Organization
Regional Office Bhavishya Nidhi Bhawan
Lady Doak College Road Madurai-625 002.
- 5 The Regional Provident Fund
Commissioner-II (Adm)
Employees Provident Fund Organization
Regional Office Bhavishya Nidhi Bhawan
Lady Doak College Road Madurai-625 002.
- 6 The Assistant Provident Fund
Commissioner (Adm)
Employees Provident Fund Organization
Regional Office Bhavishya Nidhi Bhawan
Lady Doak College Road Madurai-625 002. Petitioners

Versus

1 Saravana Kumar.S

2 The Registrar
Central Administrative Tribunal
Madras Bench Chennai.

Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records relating to the impugned order dated 27.7.2016 made in O.A.No.1653 of 2013 filed by the 1st respondent herein on the file of the 2nd respondent and quash the same.

For petitioners : Mr.M.T.Arunan
For R1 : Mr.P.V.Balasubramanian for
M/s.BFS Legal

ORDER

(Order of the court was made by RMT TEEKAA RAMAN,J.)

Heard the learned counsel appearing for the parties.

2. The first respondent herein filed the Original Application before the Central Administrative Tribunal for the following relief

"To quash the order bearing TN/MD/RO/Adm-1/A7/Pay fix arrear recy/2013 dated 21.10.2013 passed by the fifth respondent culminated in Order bearing TN/MD/RO/Adm-1/A7/Pay fix arrear recy/2013 dated 2.7.2013 passed by the sixth respondent and direct the respondents to fix the pay of the applicant as per Order bearing No.TN/RO/MDU/Adm/A7/Pay fix/DPA/2010 dated 19.8.2010."

3. Brief facts that are necessary for disposal of the writ petition are as under:-

The petitioners had introduced a new cadre of Data Processing Assistant (DPA) and notified the Recruitment Rules for the same. Subsequently, finding that the existing Data Entry Operators (DEO) was a dying cadre and candidates with requisite educational qualification were available, they had granted one time relaxation and brought them into the DPA cadre and fixed their pay notionally from the date of notification of the Recruitment Rules and monetary benefits with effect from the date of assumption of charge by the first respondent herein, he being one of the beneficiaries. However, later, on the ground that it was only a conversion from the post of DEO, the pay was sought to be re-fixed, which was under challenge before the Central Administrative Tribunal.

4. Considering the facts and circumstances of the case, the Central Administrative Tribunal has held that similarly placed in other Commissionerates were granted fitment at Rs.12,540/-, there is no justification in denying to pay the same benefit only to the applicant and thereby quashing the impugned order, directed for restoration and fixation of pay to the application.

5. Challenging the correctness of the order passed by the Central Administrative Tribunal, the Union of India has filed this writ petition.

6. The learned counsel Standing Counsel appearing for the petitioners, would submit that the first respondent has been absorbed only by way of conversion on one time relaxation and therefore, he is not entitled to get initial fitment of Rs.12,540/- and though this has been pointed out in the show cause notice, it has not been considered by the Central Administrative Tribunal.

7. Per contra, the learned counsel for the first respondent, drawing our attention to various circulars and also gazette notification dated 20th May 2009, wherein it has been stated that as a one time relaxation on cadre restructuring, the existing Data Entry Operators (Gr-A)/(Gr-B) (Gr-C) possessing the minimum educational qualifications with six years of regular service shall be deemed to have been appointed from the date of notification of the rules, would submit that there cannot be two different pay scales for the same cadre on the ground that one is on direct recruitment and another is on conversion/absorption by way of one time relaxation. He would rely upon the decision of the Delhi High Court in the case of GOVERNMENT OF NCT OF DELHI AND ANOTHER v. SOMVIR RANA AND OTHERS (W.P.(C)2634/2017 CM APPL 11450/2017 - dated 23.3.2017) in support of his submission which also came to be confirmed by the Apex Court.

8. After going through the factual position of the case and the materials placed before us, especially Note.1 of the schedule annexed to the gazette notification dated 20th May 2009, as found from page 4 of the typed set of papers, we find that the very order of promotion of the first respondent herein shall be deemed to have been appointed from the date of notification of such rules and therefore, we have no hesitation to hold that the order passed by the Central Administrative Tribunal does not suffer from any irregularity or illegality and it is based on the gazette notification and the pay fixation of the petitioner in this case at Rs.12540/- does not warrant any interference.

9. In this view of the matter the writ petition filed by the Union of India shall stand dismissed. No costs. The connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (Audit)

//True Copy//

Sub Assistant Registrar

ssk.

To:

- 1 The Secretary,
Union of India
Ministry of Labour and Employment
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7 The Registrar
Central Administrative Tribunal
Madras Bench Chennai.

+1cc to Mr.BFS LEGAL, Advocate, S.R.No. 7840
+1cc to Mr.M.T.ARUNAN, Advocate, S.R.No. 8266

W.P.No.7202 of 2017

BR(CO)
TR(14/03/2018)



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