IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.12.2018

Coram
The Hon'ble Mr.Justice M.M.Sundresh
and
The Hon'ble Justice Krishnan Ramasamy

Writ Petition No.7728 of 2007
and
M.P.No.1 of 2007

S. Gopalasamy ...Petitioner

Vs.

1. The Senior Accounts Officer,
Pay and Accounts Office,
Customs House,
Rajaji Salai, Chennai - 600 001.

2. The Chief Accounts Officer,
Customs Department,
Customs House,
Rajaji Salai, Chennai - 600 001.

3. The Commissioner of Customs (Sea Port)
Customs House (Sea Port)
Rajaji Salai, Chennai - 600 001.

4. The Secretary,
Government of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi 110 001.

5. The Secretary,
Department of Personnel and Training,
Ministry of Personnel, Public Grievances and Pension,
Government of India,
North Block, New Delhi - 110 001.

6. The Registrar,
Hon'ble Central Administrative Tribunal
Chennai Bench,
City Civil Court Building,
Chennai - 600 104. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the proceeding of the sixth respondent/Tribunal, in its order, dated 08.02.2006, passed in O.A.No.115 of 2005, affirming the order passed by the third respondent dated 24.02.2004, in his proceeding bearing F.S.Misc.31/2001-Acts and to quash the same and consequently, to direct the respondents 1 to 4 to pay arrears of salary amounting to Rs.1,80,092/- together with interest at the rate as may be determined by this Court from the deemed date of promotion till the date of payment.

For Petitioners : Mr.T.T.Ravichandran

For Respondents-1 to 4 : Mrs.Hema Murali Krishnan
Senior Panel Counsel

For Respondent-5 : Mr. A.P.Srinivas
Senior Panel Counsel

For Respondent-6 : Tribunal

O R D E R

(Order of the Court was delivered by Krishnan Ramasamy,J.,)

This Writ Petition has been filed by the petitioner challenging the order of the sixth respondent, Central Administrative Tribunal (hereinafter, referred to as 'Tribunal') dated 08.02.2006, in O.A.No.115 of 2005, affirming the order passed by the third respondent dated 24.02.2004 and to quash the same and consequently, to direct the respondents 1 to 4 to pay arrears of salary amounting to Rs.1,80,092/- together with interest from the deemed date of promotion till the date of payment.

2. We have abbreviated the narration of the case, restricting it only to the relevant details, which are as follows:-

i) The petitioner was appointed as Preventive Officer (PO) Customs, in the year 1967 at Chennai Circle. Thereafter, he was promoted as PO Grade II in the year 1971 and further promoted as Superintendent (Customs) in the year, 1992 and retired from service by availing the benefit of Voluntary Retirement Scheme (VRS) in the year 1999.

ii) Prior to 01.08.1975, the cadre of PO was one and the same for the Customs Office situated at Madras and Vishakapatnam. However, on 05.06.1971, the Central Board of Excise and Customs (CBEC), took a decision to bifurcate the cadre of P.O. and retain a combined cadre for Customs Offices at

Madras and Vishakapatinam, for the purpose of promotion to the next higher grade, viz., Superintendent of Customs (Preventive). It was also decided by CBEC in the year 1973 that the strength of POs in the SG POs should be separately fixed for Madras Customs House (henceforth, referred to as 'MCH') and Vishkapatnam Customs House (henceforth, referred to as 'VCH) and the vacancies be filled from those, who opted for the particular Customs House, however, for the grant of promotion to the higher post of Superintendent of Customs (P), the combined seniority of POs at both the Customs Houses, viz., MCH and VCH continued to be taken into consideration.

iii) According to the petitioner, the Customs Department called for options with regard to choice of place only from the POs working at VCH House and not from the POs, working at MCH. Thus, subsequent to such bifurcation, which was effected from 01.08.1975, the petitioner continued at MCH, whereas, the said N.V.Ramana, who was appointed as PO Grade I in the year 1972 was posted at Vishakapatnam, as per his option. Thereafter, he was further promoted as Senior Grade PO in the year 1976. In course of time, the petitioner and N.V.Ramana got promoted as Superintendents in the year 1992 and 1991 respectively. Whileso, the third respondent published a seniority list, wherein, the POs, who were juniors were placed above the seniors. This was challenged by the petitioner and two others, viz., P.V.Surya Kumar and N.Krishnan Nair, by filing O.A.Nos.332 to 334 of 1992, before the Tribunal on the ground that, when promotions were effected directly on the basis of the seniority in the combined cadre of POs, who joined the services prior to 01.08.1975, irrespective of the place of duty, the third respondent ought not to have placed them below the POs, who were juniors to them. The Tribunal, vide order, dated 22.02.1993, disposed of the Applications by directing the Official respondents to consider the claim of the applicants and redraw a seniority list. Pursuant to which, a revised seniority list was drawn by the third respondent, by order, dated 21.03.1991, wherein, the applicants in O.A.Nos.332 to 334 of 1992, were was placed above their juniors, insofar as the petitioner herein is concerned, he was placed above one N.V.Ramana. Even after such restoration of seniority, the petitioner noticed pay disparity with his immediate junior N.V.Ramana.

iv) Therefore, the petitioner made a representation to the third respondent to fix his pay on par with said N.V.Ramana. However, the petitioner's such claim was rejected by the third respondent on 13.04.1994. Feeling aggrieved, the petitioner and two others, P.V.Surya Kumar and N.Krishnan Nair filed O.A.No.826 of 1994 and the Tribunal by order, dated 10.01.1997, dismissed O.A.No.826 of 1994, holding that the said N.V.Ramana was promoted within the seniority unit after bifurcation and as per the guidelines for such promotion, therefore, his pay to the promotional post as Superintendent cannot be compared with those in other Units, who have been directly promoted from the post of PO to the Superintendent. Against the said decision of the Tribunal, Special Leave Petition was preferred by the petitioner, which was dismissed by the Hon'ble Supreme Court.

v) After dismissal of the Special Leave Petitioner, the afore mentioned N.Krishnan Nair, one of the applicants in O.A.No.826 of 1995, filed a memorial to the President on 29.05.2018, seeking a sympathetic consideration of his claim for stepping up his pay with that of his Junior and the President, after taking into consideration the service rendered by the said N.Krishnan Nair, recommended his case to the fourth respondent vide communication dated 20.08.1999, to step up his pay. In the light of the said recommendation, the petitioner filed a memorial to the President in the year 1999 and the petitioner reliably understands that the fourth respondent has directed the third respondent to step up the pay of all seniors, who were immediately placed above N.V.Ramana and to grant the benefit of pay fixation and consequential arrears of pay with effect from 21.03.1991.

vi) It is the case of the petitioner that the despite issuance of such direction by the President and the fourth respondent issued an order, dated 27.02.2001, directing the third respondent to step up his pay on par with the junior, N.V.Ramana, the disbursing Authority has not chosen to disburse the arrears of salary. Hence, the petitioner filed O.A.No.205 of 2003, seeking direction upon the respondents 1 to 3 to implement the order passed by the fourth respondent, dated 27.02.2001. The Tribunal, by order dated 11.09.2003, disposed of the Application by directing the respondents to consider the claim of the petitioner based on the decision taken by the Department of Personnel and Training and regulate his pay. However, the third respondent negatived the claim of the petitioner, by order, dated 24.02.2004. Challenging the same, the petitioner filed O.A.No.205 of 2005, and the Tribunal, vide the order, dated 08.02.2006, dismissed the application imposing costs of Rs.2,500/-. Aggrieved over the same, the present Writ Petition has been filed.

3. We have heard the submissions of the learned counsel for the petitioner and the learned Senior Panel Counsels appearing for the respective respondents and perused the materials available on record, including the counter affidavit filed by respondents 1 to 4.

4. Since the challenge in this Writ Petition is only to the order passed by the Tribunal, dated 08.02.2006 passed in O.A.No.115 of 2005, whereby, the order passed by the third

respondent, rejecting the claim of the petitioner to step up his pay on par with his junior N.V.Ramana, was confirmed, we are not adverting to the other facts of the case.

5. At the outset, we would like to point out that the Writ Petition filed by the petitioner is liable to be dismissed on the sole ground that the issue involved herein is no longer res integra, as the same has already been decided by the Tribunal, in an Original Application filed by the petitioner and two others in O.A.No.826 of 1994, which was dismissed by order, dated 10.01.1997, holding that the said N.V.Ramana was promoted within the seniority unit after bifurcation and as per the guidelines for such promotion, and therefore, his pay to the promotional post as Superintendent cannot be compared with those in other Units, who have been directly promoted from the post of PO to the Superintendent. Further, the Tribunal had arrived at such fine conclusion after taking into consideration of the fact that said N.V.Ramana had been promoted to the intermediate post of SG PO available at VCH, whereas, such a promotional avenue was not available at MCH, as MCH had adequate number of seniors, and by virtue of promotion as Superintendent in the year 1991, the said N.V.Ramana was drawing more pay when compared to the petitioner's pay, though the petitioner being a senior.

6. That apart, when the petitioner challenged the order of dismissal passed by the Tribunal in O.A.No.826 of 1994, by way of Special Leave Petition, the Hon'ble Supreme Court was also pleased to dismiss the Special Leave Petition, thereby, the claim made by the petitioner to step up his pay on par with his junior N.V.Ramana had attained finality.

7. Though it is the case of the petitioner that the said N.Krishnan Nair, who was one among the applicants in O.A.No.826 of 1994, after dismissal of the Special Leave Petition, filed a memorial to the President on 29.05.2018, seeking a sympathetic consideration of his claim for stepping up of his pay on par with his junior, and that, pursuant to which, the fourth respondent directed the third respondent to step up his pay, and since the petitioner is also one among the applicants in O.A.No.826 of 1994, made such a request to the President, seeking very same relief, and though the petitioner claims that pursuant to the said memorial, the fourth respondent, vide communication dated 27.02.2001 directed the third respondent to consider the claim of the petitioner to step up the pay, however, in O.A.No.205 of 2003 filed by the petitioner, the question for consideration was whether the petitioner can be granted the relief based on the order of the fourth respondent dated 27.02.2001, which has been superseded by the communication dated 12.11.2001. The Tribunal found that merely because Krishnan Nair was granted the benefit of stepping of pay by order, dated 20.08.1999, the Tribunal cannot perpetuate the

mistake committed by the respondents, if any, in granting the relief to Krisnan Nair. Thus, by rendering such findings, the Tribunal, by order dated 11.09.2003, disposed of the Application by directing the respondents to consider the claim of the petitioner based on the decision taken by the Department of Personnel and Training and regulate his pay. In pursuant to such order of the Tribunal, dated 11.09.2003, the Department vide letter dated 31.10.2003, sought for a clarification from CBEC, and CBEC, in turn, sought for an opinion from Department of Personnel and Training, vide its letter, dated 27.01.2004, consequent upon which, the Department of Personnel and Training advised that, if the petitioner's claim was not covered under the Rules, the same could not be allowed, therefore, his claim may be examined as per the Rules in Consultation with the Pay and Accounts Office. Owing to the said view of the Department of Personnel and Training, the Pay and Accounts Officer, vide, letter dated 11.02.2004, had stated that stepping up of pay of the petitioner with respect to his junior N.V.Ramana could not be given as per the rules, as such, he is not entitled for the claim sought for.

8. Thus, in the light of the said aforesaid clarification issued by the Department of Personnel and Training and Pay and Accounts Officers dated 27.01.2004 and 11.02.2004, the third respondent negatived the claim of the petitioner, by order, dated 24.02.2004. Aggrieved by the rejection of the claim by the third respondent, though the petitioner filed O.A.No.115 of 2005, the Tribunal, taking into consideration the facts of the case, as narrated in the preceding para of this order, vide the order, dated 08.02.2006, rightly dismissed the application imposing costs of Rs.2,500/- on the ground that, the order impugned thereunder, rejecting the claim of the petitioner for stepping up his pay on par with his junior N.V.Ramana, in fact, was passed as per the order of the Tribunal in O.A.No.205 of 2005. Therefore, the petitioner cannot have a say that in the light of the order of the fourth respondent, respondents 1 to 3 ought to have passed an order stepping up his pay. Insofar as the following reported judgments relied upon by the petitioner are concerned, viz., i) (1997) 3 SCC 176, in the case of Union of India Vs. P.Jagdish and others; ii) (2008) 1 SCC 586, in the case of Union of India Vs. Dineshan K.K ; iii) (2009) 3 SCC 94 Gurcharan Singh Grewal Vs. Punjab State Electricity Board; iv) (2011) 15 SCC 772 in the case of Commissioner and Secretary to Government of Haryana and others, the same are of no assistance to the petitioner's case, as the principles laid down in those decisions are different to the facts of the case on hand.

9. Further, we would like to point out that, in the so called recommendation, relied upon by the petitioner, wherein, the claim of N.Krishnan Nair was considered as a very special case, however, the same shall not be treated as condition

precedent. Therefore, the petitioner cannot rely upon the benefit granted in the case of N.Krishnan Nair, in support of his claim, nor, the order passed by the fourth respondent, dated 27.02.2001, which, in fact was superseded by the order of CBEC, dated 12.11.2001. Admittedly, the said order has not been put to challenge as on today. Therefore, the question of application of order dated 27.02.2001 does not arise. Therefore, we hold that the Tribunal taken into consideration all these aspects and rightly dismissed the O.A.No.115 of 2005, and we do not find any perversity or illegality to interfere with the same.

10. Thus, for the reasons stated hereinabove, we dismiss this Writ Petition as being totally devoid of merits. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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Customs House,
Rajaji Salai, Chennai - 600 001.

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6. The Registrar,
Central Administrative Tribunal
Chennai Bench,
City Civil Court Building,
Chennai - 600 104.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.82809

Writ Petition No.7728 of 2007

NMI(CO)

rrs 24/01/2019