

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.P.No.9799 of 2018

E..Chandramouleeswara Gupta ... Petitioner

Vs

1.Union of India rep. by the
General Manager, Southern Railway,
Park Town, Chennai - 3.

2.The Divisional Railway Manager,
Chennai Division, Southern Railway,
NGO Annexe, Park Town,
Chennai - 3.

3.The Sr. Divisional Personnel Officer,
Chennai Division, Southern Railway,
NGO Annexe, Park Town,
Chennai - 3.

4.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the order made in O.A.No.126 of 2011 dated 03.12.2013 to quash the same and to consequently direct the respondents 1 to 3 to protect petitioner's pay in the scale of pay Rs.1200-2040 as on 28.08.1992 in the cadre of Office Clerk with other consequential service benefits as stipulated in Railway Board's decision under Rule 226 of the Indian Railways Establishment Code read with para 312 and para 174 of the Indian Railways Establishment Manual including the pecuniary benefits.

For Petitioner .. Mr.L.Chandrakumar

For Respondents.. Mr.M.T.Arunan for R1 to R3
R4 - Tribunal

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner was absorbed as a Commercial Clerk on 18.07.1984. Thereafter, he was promoted as Senior Parcel (Commercial) Clerk with effect from 26.07.1987. While working in the aforesaid capacity, he made a request for change of category as Office Clerk. The request made was acceded to on the condition that the petitioner would be placed at the bottom in the post of Office Clerk. Accordingly, while foregoing the seniority in the post of Senior Parcel (Commercial) Clerk, the petitioner joined as Office Clerk in the Personnel Department on 28.08.1992.

2.The petitioner once again made a representation to go back to the post of Commercial Clerk. This request was once again considered positively and he was accordingly posted as a Commercial Clerk. However, the petitioner raised a dispute inter alia alleging that his seniority as Officer Clerk will have to be carried to the transferred post of Commercial Clerk. The request made was rejected and the challenge made ended against him. Thereafter, he made a representation to respondents 1 to 3 once again raising the very same issue though an additional issue was raised seeking pay protection in the post of Commercial Clerk. The requests made were accordingly rejected. The Tribunal also dismissed the Original Application. Hence the present writ petition.

3.Learned counsel appearing for the petitioner would submit that the pay protection which the petitioner was receiving while working as Office Clerk will have to be maintained after his transfer once again to the post of Senior Commercial Clerk (Parcel). Therefore, the pay protection will have to be given to him with effect from 1987.

4.Learned counsel appearing for respondents 1 to 3 would submit that there is no provision for pay protection. It is the petitioner who opted to go from the post of Senior Commercial Clerk to the post of Office Clerk in the Personnel Department and thereafter once again sought repatriation as Senior Commercial Clerk. Therefore, he is not entitled for the relief sought for. He cannot be allowed to approbate and reprobate. Thus, the cadre being different, he is not entitled for the payment and salary received in the Personnel Department.

5.We are only concerned with the pay protection in this writ petition. All other issues have already been concluded against the petitioner. Admittedly, the petitioner's request for

repatriation was accepted. Unlike the earlier case in which the petitioner was asked to give an undertaking and accept the conditions while acceding to his request for transfer to Personnel Department no such condition has been imposed this time. Admittedly, when the petitioner was receiving higher salary, he cannot be asked to receive a lesser one, though he was once again repatriated at his request. Certainly, such decision has got civil consequence. If respondents 1 to 3 are of the view that such a request cannot be considered without involving pay reduction, they could have intimated the petitioner at that point of time. Certainly, it is the discretion of respondents 1 to 3 to consider the request of the petitioner to go from one Department to another Department along with category. While doing so, they can also impose any condition if they want. However, when no condition was imposed at the time of repatriation, an employee cannot be allowed to suffer monetary loss. We also clarify at this stage that the petitioner is not asking for any seniority. However, that does not mean, he will not be entitled to get lesser salary in the post in which he has been re-transferred. These two issues are totally different from each other. Any contrary interpretation will make an employee to loose the benefit of service he has rendered already. It is one thing to say that the employee will not get the benefit but he cannot be allowed to give up his right accrued to him unless it is imposed upon him as a pre-condition for consideration of his request for repatriation or transfer from one department to another. Therefore, the case on hand will have to be considered as peculiar on its own facts. Thus, we clarify that it is well open to respondents 1 to 3 to impose such other condition including the pay fixation in the transferred category while considering the request made by the employee. In the absence of any such condition, while repatriating him or transferring him, the same cannot be imposed by way of inference or by subsequent decision.

6. In such view of the matter, the writ petition stands allowed only insofar as the pay protection of the petitioner alone is concerned. Resultantly, the pay which he was receiving hitherto will have to be protected. No costs.

sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The General Manager,
Southern Railway,
Park Town, Chennai - 3.

2.The Divisional Railway Manager,
Chennai Division, Southern Railway,
NGO Annexe, Park Town,
Chennai - 3.

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Chennai Division, Southern Railway,
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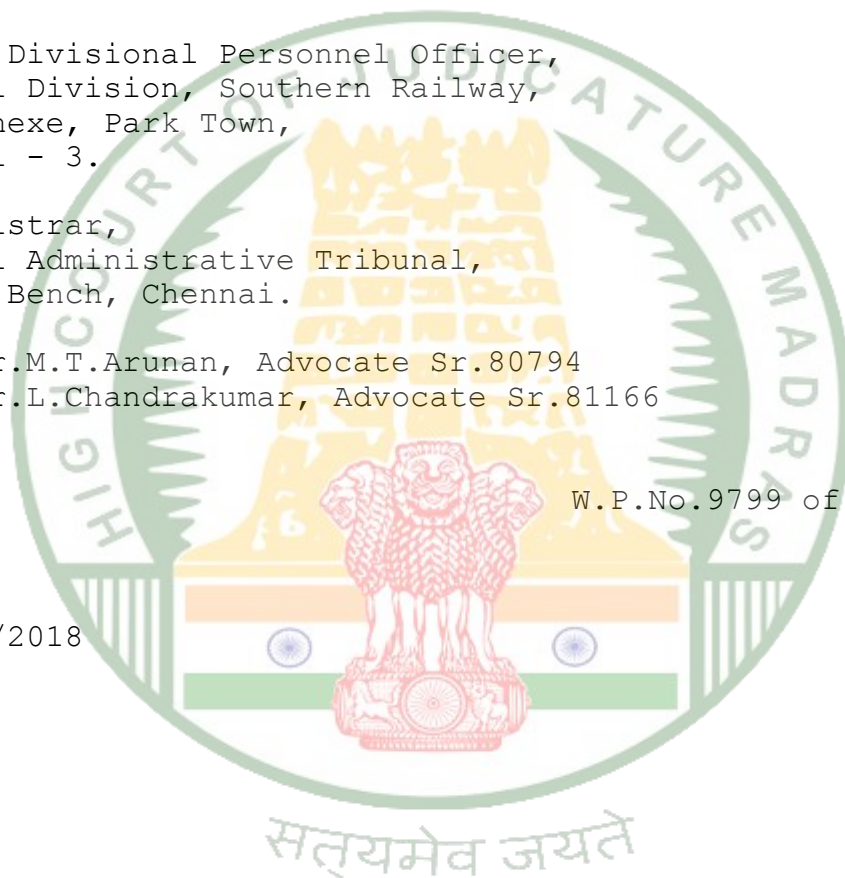
4.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

+1cc to Mr.M.T.Arunan, Advocate Sr.80794

+1cc to Mr.L.Chandrakumar, Advocate Sr.81166

W.P.No.9799 of 2018

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