

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.32712 of 2017
and W.M.P.No.36029 of 2017

- 1.Union of India rep.by
The General Manager,
Southern Railway, Park Town,
Chennai-600 003.
 - 2.The Chief Personnel Officer,
Southern Railway, Park Town,
Chennai-600 003.
 - 3.The Financial Advisor and Chief Accounts Officers,
Southern Railway, Park Town,
Chennai-600 003.
 - 4.The Principal Chief Engineer,
Southern Railway, Park Town,
Chennai-600 003.
- Petitioners

-vs-

- 1.S.Suryanarayanamurthy
 - 2.The Registrar,
Central Administrative Tribunal,
Madras Bench.
- ... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records on the file of the second respondent in O.A.No.310/01452/2016 dated 02.08.2017 and quash the same.

For Petitioners :: Ms.T.P.Savitha

For Respondents :: Mr.L.Chandrakumar for R1

ORDER
(Made by HULUVADI G.RAMESH, J.)

The first respondent, who was selected and appointed in an ex-cadre post in the Computer Cell of the appellant-Department by an order dated 30.03.1994, continued to work in the said post till the date of his retirement on 31.08.2015. Being aggrieved by the determination of his retirement benefits on the basis of his substantive pay and not the pay including grade pay actually drawn at the time of superannuation, he filed an application before the second respondent Tribunal in O.A.No.310/01452/2016 to determine his retirement benefits on the basis of last pay drawn. The said application was disposed of, quashing the communication dated 29.12.2015 impugned therein, with a direction to re-determine the retirement benefits of the first respondent, by order dated 02.08.2017. Challenging the said order, the Department has come up with this writ petition.

2.The learned counsel for the petitioners-Department has submitted that the Tribunal has failed to see that the rules and provisions applicable to cadre and ex-cadre posts are not one and the same. It is his further submission that the Tribunal failed to see that the Pension Pay Order was issued only based on the pay in the parent cadre post as per rules. Stating so, he prayed for quashing the impugned order passed by the Tribunal.

3.The learned counsel for the first respondent has submitted that the Tribunal has considered the matter in proper perspective and has passed the impugned order, which does not require any interference in the hands of this Court.

4.Heard the learned counsel on either side and perused the materials available on record.

5.It is only a case of determining the retirement benefits based on the last drawn pay. It is not the case for consideration of seniority or inter-se seniority or promotion. The Tribunal has granted relief to the first respondent relying upon the order of its Principal Bench in O.A.Nos.472 and 474 of 2014 dated 26.02.2015, which has been relied upon by the learned counsel for the first respondent before the Tribunal, wherein under similar circumstances, such a relief has been granted to the applicant therein, relying upon the Railway Services (Pension) Rules, 1993, by which pension has to be determined on the basis of the average pay drawn by the Railway employee during the last 10 months preceding to the retirement of the employee and similarly, as per the aforesaid Rules, gratuity has to be determined on the basis of the last pay drawn by the employee. It was also held that it is immaterial whether the employee was working on the date of his retirement in the cadre

post or in an ex-cadre post; what is relevant is the last pay drawn by the applicant, preceding to his / her retirement for determining his / her pension and gratuity. It was clearly held that irrespective of the fact that whether he was in the deputation post on the date of his retirement or in his cadre or ex-cadre post, pension has to be determined on the basis of the last pay drawn by the employee.

6.The Tribunal has rightly dealt with the matter relying upon a similar case, and held that the contention of the Department that the order passed by the Tribunal in a similar case could not be made applicable to the first respondent herein unless there is a specific instruction issued by the Railway Board, is not legally sound and it is not a sufficient ground for rejection of the claim made by the first respondent. Hence, we are not inclined to interfere with the same.

7.In view of the above stated circumstances, the writ petition stands dismissed. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

KM

To

The Registrar,
Central Administrative Tribunal,
Madras Bench.

+1cc to Mr.L.Chandra Kumar, Advocate SR.No.47151

+1cc to Mr.T.P.Savitha, Advocate SR.No.46786

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KJI (CO)
GN(02/08/2018)