IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2018

CORAM

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

W.P.No.34416 of 2017
and W.M.P.No.38252 of 2017

1.The Union of India
rep.by the General Manager,
Southern Railway, Park Town,
Chennai-600 003.

2.The Senior Divisional Personnel Officer,
Tiruchirappalli Division,
Southern Railway,
Tiruchirappalli. ... Petitioners

-vs-

1.K.Prathab

2.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104. ... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari to call for the entire records pertaining to passing of the order dated 24.04.2017 passed by the Hon'ble Central Administrative Tribunal, Chennai Bench in O.A.No.772 of 2015 and quash the same.

For Petitioners :: Mrs.A.Sri Jayanthi
For Respondents :: Ms.N.R.Jasmine Padma for
Mr.L.Chandrakumar for R1

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

The first respondent herein joined Tiruchirappalli Division of the Southern Railways in the year 1980 as Commercial Clerk in the grade of Rs.260-430 and passed the prescribed examination after successful completion of training and he was appointed as RG ACNC in the same grade. He was promoted to the grade of

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Rs.330-560 and posted as Clerk in the year 1985, which was equated to Rs.1200-2040 on implementation of the IV Pay Commission Recommendations. He was promoted to the grade of Rs.1400-2300 as Head General Clerk in the year 1990 but it was declined by him. Thereafter, he was debarred for one year. In the year 1991, selection was called for, for the post of Goods Guard in the grade of Rs.1200-2400 and the first respondent had qualified in the written examination and he was selected by a duly constituted Selection Committee and empanelled for the said post. After imparting training from 01.08.1991 to 31.08.1991, the first respondent was absorbed as Goods Guard on 21.12.1991. The grievance of the first respondent is that on absorption, his pay was wrongly fixed at Rs.1380/- instead of Rs.1470/- with effect from 01.10.1991 as provided in Rule 1313 (FR 22)(1)(a)(1) R-II of the Indian Railways Establishment Code and in terms of Railway Board's order dated 04.02.1991. In this connection, the first respondent sent a representation dated 01.06.2007 to the second petitioner herein, who, in turn, rejected the same by order dated 30.08.2007. According to the first respondent, the second petitioner herein is not the competent authority to decide the issue of fixation of pay and that the incorrect fixation of pay was continued with dwindled pay packet, while implementing the recommendations of the V Pay Commission. In view of the same, the first respondent sent many representations to the authorities, but the same were not considered.

2.Hence, the first respondent has filed an application in O.A.No. 772 of 2015 before the second respondent-Tribunal. After considering the facts and circumstances of the case, the second respondent allowed the case of the first respondent, quashing the order passed by the second petitioner herein, by order dated 24.04.2017. Challenging the same, the appellant-Southern Railways has come up with this appeal.

3.Amongst many grounds raised in this appeal, the learned counsel for the petitioners has mainly contended that the benefits of Rule 1313 (FR 22)(1)(a)(1)R-II of the Indian Railways Establishment Code are applicable only to the candidates who are promoted from a post carrying lesser pay to a post carrying higher pay and it has no application or relevance to the 'absorption' of a person to a post carrying identical scale of pay. The Tribunal ought to have considered the fact that since the first respondent was only absorbed in the post of Goods Guard from the post of Commercial Clerk, such absorption does not entitle any fixation of pay, according to the learned counsel for the petitioners.

4.Per contra, 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 and hence the same does not require any interference in the hands of this

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Court. The learned counsel relied upon the decision of a Division Bench of this Court in W.P.No.35301 of 2015 dated 28.03.2017 in fortification of her contention and submitted that the said decision is squarely applicable to the case of the first respondent herein.

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

6.We have perused the Division Bench decision of this Court in W.P.No.35301 of 2015 dated 28.03.2017, which has been relied upon by the learned counsel for the first respondent. In that case, the first respondent therein was appointed as Ticket Collector and promoted to Senior Ticket Collector in the pay scale of Rs.1200-2040 in 1995 and thereafter he was selected and posted as Goods Guard by a newly constituted Selection Committee and after being subjected to training, he assumed charge as Goods Guard on 25.04.1997. Even though the post of Goods Guard involves assumption of higher duties and responsibilities, the pay of the first respondent therein was not fixed under Rule 1313 of the Indian Railways Establishment Code. Thereafter, he was promoted to the post of Passenger Guard on 12.03.2007, but his pay was not fixed properly. The first respondent therein approached the Tribunal and the Tribunal held that the first respondent therein was also eligible for the benefit of application of Rule 1313, as he was similarly placed like other employees covered under the order passed by the Tribunal in O.A.No.717 of 2006. It was also held that appointment to the post of Goods Guard can only be construed as promotion. The Tribunal had taken note of the fact that the first respondent therein was subject to selection, by way of written examination and interview and thereafter he was subjected to training.

7.When a similar issue arose in O.A.No.717 of 2006 before the Tribunal, the Tribunal held that there were omissions in the Circular of the Railway Board dated 24.05.1999, which notified the application of amended FR 22(1)(a)(1) for promotion from certain feeder categories to the promoted post carrying the same pay scale, to specifically mention certain posts in the feeder category carrying the same scale of pay, and merely because of the said omissions, the benefit under FR 22(1)(a)(a) cannot be denied to other similarly placed categories.

8.In these circumstances, the Division Bench of this Court held that the appointment of the first respondent therein to the post of Goods Guard can only be construed as one of promotion and that he was entitled to fixation of pay on appointment of Goods Guard under FR 22(1)(a)(1).

9.In the present case also, the first respondent herein was subjected to selection, by way of written examination and

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interview and thereafter he was subjected to training. Here, the first respondent promoted to the grade of Rs.330-560 and posted as Clerk in the year 1985. In the year 1991, selection was called for, for the post of Goods Guard in the grade of Rs.1200-2400 and the first respondent had qualified in the written examination and he was selected by a duly constituted Selection Committee and empanelled for the said post. After imparting training from 01.08.1991 to 31.08.1991, the first respondent was absorbed as Goods Guard on 21.12.1991. Here also, the first respondent was getting lower pay before absorption, and the post to which he was absorbed, ie., Goods Guard, involves assumption of higher duties and responsibilities. The Division Bench decision of this Court in W.P.No.35301 of 2015 dated 28.03.2017, squarely applies to the case on hand.

10.In view of the above stated circumstances, the impugned order passed by the Tribunal is confirmed and the writ petition is dismissed. Consequently the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

KM
To
1. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-600 104.

2.The General Manager,
Southern Railway, Park Town,
Chennai-600 003.

3.The Senior Divisional Personnel Officer,
Tiruchirappalli Division,
Southern Railway,
Tiruchirappalli.

+1 CC to Mr.L. Chandra Kumar, Advocate sr 46625.
+1 CC to M/s.A. Srijayanthi, Advocate sr 46461.

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SP(01/08/2018)

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