

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2018

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE S.S.SUNDAR

W.P.Nos.29370 and 15570 of 2017
and W.M.P.No.16876 of 2017

W.P.No.29370 of 2017:

C.Puviarasu ... Petitioner

-vs-

- 1.The Chairman,
Railway Board,
Rail Bhavan, New Delhi.
- 2.The General Manager,
Southern Railway,
Park Town, Chennai-600 003.
- 3.The Chief Personnel Officer,
Headquarters Office, Personnel Branch,
Southern Railway, Chennai-600 003.
- 4.The Central Administrative Tribunal
Chennai Bench, represented by
the Deputy Registrar,
High Court Buildings,
Chennai-600 104. .. Respondents

W.P.No.15570 of 2017:

- 1.The Chairman,
Railway Board,
Rail Bhavan, New Delhi.
- 2.The General Manager,
Southern Railway, Park Town, Chennai-600 003.
- 3.The Chief Personnel Officer,
Headquarters Office, Personnel Branch,
Southern Railway, Chennai-600 003. .. Petitioners

-vs-

1.C.Puviarasu

2.The Registrar,
Central Administrative Tribunal
Chennai.

.. Respondents

W.P.No.29370 of 2017 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the fourth respondent in OA/310/00926/2015 dated 04.04.2017 and quash the same in so far as grant of arrears, if any, with effect from the date of filing of the OA i.e. from 01.07.2015 is concerned and direct the respondents to grant arrears of salary from the date of petitioner's appointment, namely 23.01.2012.

W.P.No.15570 of 2017 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records in OA No.310/00926/2015 and quash the impugned order dated 04.04.2017 passed by the Hon'ble Central Administrative Tribunal, Chennai.

For petitioner in W.P.No.29370
of 2017 and R1 in W.P.No.15570 : Mr.J.Lakshmi Narayanan
of 2017

For respondents 1 to 3 in W.P.No.
29370 of 2017 and petitioners : Mr.P.T.Ramkumar
in W.P.No.15570 of 2017

COMMON ORDER

(Order of the Court was made by
THE HON'BLE ACTING CHIEF JUSTICE)

It is the case of the petitioner in W.P.No.29370 of 2017 / first respondent in W.P.No.15570 of 2017 (hereinafter referred to as "incumbent") that he joined Indian Navy as Air Electrical Radio (EAAR-4) on 31.07.1999 and got promoted as Chief EAAR. The incumbent was relieved from service on 31.12.1999 and was issued with 'No Objection Certificate' dated 28.10.2009 to take up civil employment after release. Thereafter, he was disbursed with a sum of Rs.2,67,477/- towards service gratuity and Rs.1,33,739 towards DCRG. Pursuant to a Notification issued by the Railway Recruitment Board for appointment to the post of Junior Engineer (Drawing) in the pay scale of Rs.9300-34800+GP4200, he appeared in the examination and came out successful and thereafter appointed as Trainee Junior Engineer. After completing the training for 18 months, the incumbent was under probation which ended on 22.08.2015. Thereafter, he

expressed his willingness to repay the DCRG and service gratuity which he already received from the Indian Navy for issuance of service certificate, for the purpose of counting the military service. The third respondent in W.P.No.29370 of 2017, passed an order on 03.07.2014 rejecting the incumbent's claim for counting of military service, by relying upon the Railway Board Circular in RBA No.40/2006 dated 04.08.2006 which states that military personnel who have been re-employed in civil or railway service on or after 01.01.2004 will have no connection with CCS (Pension) Rules, 1972 / Railway Service (Pension) Rules, 1993 and hence they are inducted into the New Pension Scheme. Thereafter, the incumbent made a complaint to the first respondent in W.P.No.29370 of 2017, for which the incumbent received the same answer as he received earlier.

2.The incumbent filed an application in O.A.No.310/00926/2015 before the Central Administrative Tribunal, Chennai Bench to quash the order dated 03.07.2014 and for a direction to count the period of 10 years, 5 months and 1 day service rendered by the incumbent in the Indian Navy Service for the purpose of pay protection and qualifying service in Railways for calculation of pensionary benefits and for a further direction to apply the old pension scheme for the incumbent and grant all consequential benefits.

3.The Tribunal, relying upon the order of the Principal Bench of the Tribunal in O.A.Nos.3160 and 3162 of 2015 dated 13.02.2017, held that the said decision squarely covers the case on hand and accordingly directed the authorities to consider the case of the incumbent for notional fixation of initial pay by counting the services rendered in the Indian Navy with all the consequential benefits including fixation of pension. It was also ordered that the incumbent is also entitled to arrears, if any, with effect from the date of filing of the Original Application, ie., from 01.07.2015.

4.Challenging the said order, the incumbent has come up with W.P.No.29370 of 2017 challenging the order only in so far as granting arrears only from 01.07.2015 and for a direction to grant arrears of salary from the date of his appointment in the Railway Service, ie., 23.01.2012. The Department has come up with the writ petition in W.P.No.15570 of 2017 challenging the very order of the Tribunal.

5.The learned counsel for the Department has submitted that the Circular issued by the Railways in RBE No.225 of 2003 on 31.12.2003 alone is applicable to the new entrants to Central Government Service, wherein it has been decided that the existing Railway Service (Pension) Rules, 1993 including commutation of Pension Rules and Extraordinary Pension Rules shall not be applicable to the new recruits entering Railway

Service from 01.01.2004. The incumbent has not referred about the Circular in RBE No.225 of 2003 in his Original Application filed before the Tribunal. The Circular referred to by the incumbent in RBE No.101 of 2001 is applicable only upto the issue of RBE No.225 of 2003 dated 31.12.2003. The counsel also submitted that since the incumbent was appointed in Railway Service only on 23.01.2012, he is governed only by RBA No.40 of 2006 dated 04.08.2006 according to which, he is entitled for benefits only under the New Pension Scheme. He further submitted that the Tribunal has failed to consider the 4th condition mentioned in the Appointment Order issued by the Railways to the incumbent, wherein it has been categorically stated that he will be governed by the newly introduced restructured Defined Contribution Pension System applicable to all new Central Government Service including Railway Service with effect from 01.01.2004 in terms of Railway Board's letter dated 31.12.2003 in RBE No.225 of 2003. Stating so, the counsel prayed for quashing the impugned order passed by the Tribunal.

6.The learned counsel for the incumbent, in respect of granting arrears to the incumbent, has submitted that there is no valid justification for denial of arrears to the incumbent right from the date of his appointment in Railway Service, since there is no culpable delay on the part of the incumbent in exercising the option for counting his military service.

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

8.It is seen that the incumbent has joined the Indian Navy as Air Electrical Radio (EAAR-4) on 31.07.1999 and got promoted as Chief EAAR. He was relieved from service on 31.12.1999 and was issued with No Objection Certificate dated 28.10.2009 to take up civil employment after release. Thereafter, he was disbursed with a sum of Rs.2,67,477/- towards service gratuity and Rs.1,33,739 towards DCRG. Pursuant to a Notification issued by the Railway Recruitment Board for appointment to the post of Junior Engineer (Drawing) in the pay scale of Rs.9300-34800+GP4200, he appeared in the examination and came out successful and thereafter appointed as Trainee Junior Engineer. After completing the training and probation, he expressed his willingness to repay the DCRG and service gratuity which he already received from the Indian Navy for issuance of service certificate, for the purpose of counting the military service. The third respondent in W.P.No.29370 of 2017, passed an order on 03.07.2014 rejecting the incumbent's claim for counting of military service, by relying upon the Railway Board Circular No.RBA No.40/2006 dated 04.08.2006 which states that military personnel who have been re-employed in civil or railway service on or after 01.01.2004 will have no connection with CCS (Pension) Rules, 1972 / Railway Service (Pension) Rules, 1993

and hence they are inducted into the New Pension Scheme. The incumbent filed an application in O.A.No. 310/00926/2015 before the Central Administrative Tribunal, Chennai Bench, and the Tribunal directed the authorities to consider the case of the incumbent for notional fixation of initial pay by counting the services rendered in the Indian Navy with all the consequential benefits including fixation of pension, by relying upon the order of the Principal Bench of the Tribunal in O.A.Nos.3160 and 3162 of 2015 dated 13.02.2017. It was also ordered that the incumbent is entitled to arrears, if any, with effect from the date of filing of the Original Application, ie., from 01.07.2015.

9.The fact remains that the incumbent was completely discharged from his duties in the Navy Service on 31.12.1999. He might have been discharged way back in 1999. He entered the Railway Service on 23.01.2012. Thus there was a long gap of more than 12 years and there was no continuity of service. As per the Circular of the Railways in RBE No.225 of 2003, the existing Railway Service (Pension) Rules, 1993 including commutation of Pension Rules and Extraordinary Pension Rules is not applicable to the new recruits entering Railway Service from 01.01.2004. In the subsequent Circular in RBA No.40 of 2006 dated 04.08.2006, it has been clarified that all the fresh appointees joining service on or after 01.01.2004 will be inducted only in the New Pension Scheme and Rule 34 of the Railway Services (Pension) Rules, 1993 is not applicable to the fresh employees appointed on or after 01.01.2004. In these circumstances, this Court is of the considered view that the incumbent is governed only under the New Pension Scheme, as he joined Railway Service only on 23.01.2012. Hence, the impugned order passed by the Tribunal is set aside and the writ petition filed by the Department in W.P.No.15570 of 2017 is allowed. Since we have set aside the impugned order passed by the Tribunal, the writ petition filed by the incumbent in W.P.No.29370 of 2017 challenging the order of the Tribunal in respect of granting arrears from the date of his appointment in Railway Service, does not survive for consideration and accordingly the same stands dismissed. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Chairman,
Railway Board,
Rail Bhavan, New Delhi.

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

3.The Chief Personnel Officer,
Headquarters Office, Personnel Branch,
Southern Railway, Chennai-600 003.

4.The Deputy Registrar,
Central Administrative Tribunal
Chennai Bench,
High Court Buildings,
Chennai-600 104.

+2cc to Mr.J.Lakshmi Narayanan, Advocate sr.no.55228,55227

+2cc to Mr.P.T.Ramkumar, Advocate sr.no.55187, 55186

W.P.Nos.29370 and 15570 of 2017
and W.M.P.No.16876 of 2017

rk(co)
nr 05/09/2018

सत्यमेव जयते

WEB COPY