

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

Coram

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

W.P.No.8533 of 2014

and

M.P.No.1 of 2014

- 1.Union of India rep. by its
Chairman cum Managing Director,
Bharat Sanchar Nigham Limited,
New Delhi.
 - 2.The Chief General Manager,
Tamil Nadu Circle,
Bharat Sanchar Nigham Limited,
Anna Salai, Chennai - 2.
 - 3.The Deputy General Manager,
O/o.The General Manager,
Salem.
- ..Petitioners

Vs

- 1.S.James
 - 2.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai - 104.
- ..Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari to call for the records relating to the impugned order issued by the Central Administrative Tribunal, Chennai Bench in T.A.No.81 of 2009 dated 07.09.2012 and quash the same.

For Petitioners .. Mr.M.S.Velusamy

For Respondents .. Mr.R.Ramesh for R1
R2 - Tribunal

ORDER

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

This writ petition has been filed, challenging the order of the Tribunal, by which the Original Application filed was allowed with a direction to the petitioners to pass orders to grant the benefit of stepping up of pay on par with his junior K.Palanivel with effect from 01.02.1999 with all consequential benefits. The first respondent joined the service as Telephone Operator on 01.09.1970. Thereafter, he was promoted as Phone Inspector on 24.09.1979. He was promoted as Divisional Engineer on 19.01.1998 and granted IDA upgradation under Time Bound Promotion Policy on 01.11.2004. In the aforesaid post, he reached the age of superannuation on 31.01.2008.

2.After retirement, the first respondent sought for fixation of pay on par with his juniors Mallika Ravi, who was working as Sub Divisional Engineer at the relevant point of time and thereafter on par with his junior K.Palanivel with effect from 01.02.1999. Therefore, while giving up the earlier comparison with Mallika Ravi, the stepping up of pay was sought for, based upon the salary drawn by K.Palanivel. The Tribunal accordingly allowed the application after having found that K.Palanivel was junior to the first respondent. Challenging the same, the present writ petition has been filed.

3.Learned counsel appearing for the petitioners would submit that the Tribunal has committed an error without appreciating Government of India instruction 18 under F.R.22 dated 04.02.1966. The first respondent entered into the scale of pay in the higher post of Divisional Engineer on 19.01.1998 when his juniors including Mallika Ravi and K.Palanivel were in the cadre of Sub Divisional Engineer. The scale of pay for Divisional Engineer was Rs.10325-325-15200 on 19.01.1998 as against the cadre of Sub Divisional Engineer at Rs.7500-250-12000. Both Mallika Ravi and K.Palanivel were receiving incentives in the feeder category of Sub Divisional Engineer. The moment K.Palanivel got into the cadre of Divisional Engineer, stepping up of pay was done. Thus, the Tribunal committed an error in confusing the factual issue.

4.Learned counsel appearing for the first respondent would submit that though the said respondent was promoted as Divisional Engineer, inasmuch as he was not in a substantive post, he should be construed to be holding the post of Sub Divisional Engineer. Therefore, the order of the Tribunal will have to be confirmed.

5. Though the facts are not in dispute, it would be appropriate to place on record the relevant Rule, which is extracted at page No.3 of the affidavit. The said Rule reads as under:

"F.R.22 (a) both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre.

(b) the scale of pay of the lower and higher posts in which the junior and senior officer are entitled to draw pay should be identical."

6. From the aforesaid Rule, it is very clear that both the juniors and senior officers must belong to the same cadre at the relevant point of time while considering the request for stepping up of pay. There is no dispute in the case on hand that in the cadre of Divisional Engineer, stepping up of pay was done. Now, the first respondent wants, that too, after reaching the age of superannuation, that the pay scale and the pay fixation made in favour of K.Palanivel will have to be adopted to him. It appears that K.Palanivel was receiving higher amount in terms of incentives. Be that as it may, the Rule as aforesaid will not provide for stepping up of pay between the senior who was working in the higher post and the junior who was working in the feeder category. Admittedly, the first respondent was included in the scale of pay, which is meant for Divisional Engineer with effect from 19.01.1998. Having drawn this higher scale in the higher post, it is not open to him to contend to the contrary and seek the benefits which were earned by his juniors by way of incentive in the feeder cadre of Sub Divisional Engineer. At the relevant point of time, the pay scale for the cadre of Sub Divisional Engineer was only Rs.7500-250-12000 as against the Divisional Engineer, which is obviously much higher. Therefore, we are of the view that the Tribunal misdirected itself in allowing the application. After all, the entitlement for stepping up of pay should be based upon Rules. No direction can be given by the Court contrary to the Rules.

7. In such view of the matter, we are inclined to interfere with the order of the Tribunal. Accordingly, the impugned order dated 07.09.2012 passed by the Tribunal stands set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mmi

To

The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai - 104.

+1cc to Mr.M.S.Velusamy, Advocate, S.R.No.85263

W.P.No.8533 of 2014

KAN (CO)

rrs 24/01/2019



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