

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 15.11.2018

CORAM:
THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No. 4954 of 2016

S. Banuprakash

...Petitioner

Vs.

1. The Railway Board
Rep. By it Secretary,
Ministry of Railway,
Rail Bhavan, Raisina Road,
New Delhi 110 001.
2. The General Manager,
Southern Railway,
Chennai - 600 003.
3. The Financial Adviser &
Chief Accounts Officer/Traffic/Madras,
Southern Railway,
Chennai - 600 003.
4. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.

...Respondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus and calling for the records relating to 4th respondent/Tribunal's order made in O.A. No. 1475/2010 dated 22.08.2013, to quash the same and to consequently direct the respondents 1 to 3 to re-promote the petitioner w.e.f. 30.11.2007 with arrears and all other consequential benefits including seniority.

For Petitioner : Mr. L. Chandrakumar

For Respondents : Mr. P. T. Ramkumar,
Spl. Govt. Pleader for R1 to R3
R4 - Tribunal

ORDER

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

The petitioner joined the service of the respondent as Accounts Clerk. Charges have been framed against him while working as Stock Verifier. Finding the charges as proved, the punishment of permanent reduction to a lower post of Accounts Clerk, which was two grades below the post which he was holding at the relevant point of time, was ordered. The challenge made before the statutory authorities failed and thus became final.

2. Thereafter in the year 2007, he was promoted as Junior Accounts Assistant by the order dated 20.12.2007. The petitioner was working in the said capacity for nearly three years. Suddenly, by the impugned order dated 05.08.2010, he was reverted once again to the post of Accounts Clerk by quoting another case involving one Mr.T.V.V.Satyanarayana whose challenge before the Central Administrative Tribunal failed, as confirmed by this Court. Challenging the aforesaid order, the petitioner filed an application before the Tribunal, which dismissed the same and hence the present writ petition.

3. It is an admitted fact that the petitioner had attained the age of superannuation in the month of June, 2018. The learned counsel appearing for the petitioner would submit that the order impugned, as affirmed by the Tribunal, cannot be sustained in the eye of law. The petitioner does not challenge the penalty order. The Master Circular 66 does not take away the power of the respondents 1 to 3 from considering an employee for promotion after satisfying with his performance notwithstanding an order of reduction to a lower service either permanently or for an indefinite period. The learned counsel has made reliance upon the following circular in this regard:-

"15. Reduction to a lower service/grade/post

(i) (a) The penalty of reduction to a lower grade or post should invariably be imposed for a specified period unless the clear intention is that the reduction should be permanent or for an indefinite period i.e. till such date as, on the basis of his performance subsequent to the order of reduction, he may be considered fit for promotion. Where the order imposing such penalty does not specify the period of reduction and there is coupled with it an order declaring the Railway Servant permanently unfit for promotion, the question of re-promotion will, obviously not arise.

x

x

x

(ii) In cases of reduction to lower grade for an indefinite period, repromotion will be ordered only by the authority competent to promote in higher grade and disciplinary authority has no role to play in the matter."

4. To buttress the above said submission, reliance has been made on the judgment of this Court in WP No. 28462 of 2013 dated 11.03.2015, wherein considering a similar circular it has been held as follows:-

" 32. Similarly, Rule 11(vi) of the CSS (CCA) Rules also contemplate, reduction to a lower time-scale of pay, grade, post or service only 'for a period to be specified in the order of penalty', along with a further direction in the very same order of penalty as to whether the officer will or will not gain increments or promotion during the sufferance of penalty and whether he will regain his seniority after expiry of the period of penalty. But it is only under the Administrative Instructions of the years 1962, 1964 and 2007 that the Government had indicated the availability of a power to order reduction to a lower post on permanent basis or for an unspecified period. Therefore, it is doubtful whether by Administrative Instructions, the scope of the Statutory Rule issued in exercise of the power conferred by Article 309 of the Constitution could be enlarged.

33. The reason as to why we doubt the existence of such a power is that even the power of denial of promotion to the Government servant, as a consequence of reduction to a lower grade or post, is made available under Rule 11(vi) only for a specified period. Rule 11(vi) clearly states "reduction to a lower time-scale of pay, grade, post or service, for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant such specified period to the time-scale of pay, grade, post or service from which he was reduced".

34. The only tampering that could be made to a penalty of reduction to a lower grade or post, is to say whether after re-promotion to the old post, the Government servant will have his seniority restored or not and to say whether the period of reduction will operate to postpone future increments. In other words, by virtue of clauses (a) and (b) of Rule 11(vi), the disciplinary authority is competent to impose the penalty of reduction to a lower time-scale of pay,

grade, post or service for a period specified in the order, which shall have the effect of barring the Government servant from seeking any promotion during that period, either with or without the same operating to postpone future increments after re-promotion and with or without the same allowing the restoration of his seniority upon re-promotion.

34. Therefore, the interpretation by way of Administrative Instructions given to the above Rule, virtually seeks to destroy the effect of clauses (a) and (b) and to seal the fate of an employee for ever. Such a penalty in given cases, may be much worse than the penalty of even compulsory retirement. In the case on hand, the employee appears to be 52 years of age when he filed the writ petition in the year 2013. The order of penalty was dated 10.11.2004. Therefore, if the order is understood to be one of permanent reduction till the retirement of the petitioner, it would have the effect of freezing the service life of the petitioner in the post of Time Scale Postal Assistant for a period of almost 16 to 18 years. This does not appear to be the consequence envisaged in Rule 11(vi), though it has been interpreted as such by way of Administrative Instructions.

35. Therefore, we are of the view that the matter requires reconsideration by the Respondents, in the light of what we have indicated above. Hence, the writ petition is allowed, the impugned order of the Tribunal is set aside and the Original Application filed by the petitioner in O.A. No. 40 of 2010 is allowed, setting aside the order dated 10.11.2004 issued by the first respondent. The matter is remitted back to the second respondent namely the Member (Personnel) of the Postal Services Board, instead of the first respondent, in view of the fact that the matter requires a fresh look at the Rules vis a vis, the Administrative Instructions. The second respondent shall look into the matter in the light of the observations made above and pass fresh orders in accordance with law, within a period of three months from the date of receipt of a copy of this order."

Thus, the learned counsel for the petitioner would submit that the writ petition has to be allowed, since the Tribunal has misdirected itself on the issue germane to the case.

5. Learned counsel appearing for respondents 1 to 3 would submit that what was done is a mistake by oversight and

inadvertence. This was rectified after coming to know of the decision of this Court with respect to the similarly placed person by name T.T.V. Satyanarayana. Therefore, there is no interference required with the decision of Tribunal. Learned counsel also produced a copy of the order passed by the Division Bench in WP No. 4918 of 2004 dated 04.03.2004, by which the challenge made by T.T.V. Satyanarayana to the order of reduction was repelled by holding that the punishment imposed itself is by way of concession and, therefore, no interference is required especially when the misconduct had been proved.

6. As rightly submitted by the learned counsel appearing for the petitioner, we are not concerned with the punishment imposed. The punishment of reduction in rank permanently or for indefinite period of time stands. The question for consideration is as to whether in such a case there lies a power to the respondents 1 to 3 to consider the petitioner for promotion on satisfying with his performance. The relevant part of the circular, referred above, would certainly give such a power. There is exactly a reason why he was promoted and thereafter made to work for three years. The reliance made in the impugned order with respect to the case involving T.T.V. Satyanarayana is totally misconceived. In that case, the challenge was made to the punishment imposed by reduction in rank permanently.

7. As discussed above, we are dealing with a totally different scenario. Therefore, we are of the view that the impugned order, as confirmed by the Tribunal, cannot be sustained in the eye of law. Though it is submitted by the learned counsel appearing for the respondents 1 to 3 that the clarification dated 09.08.2012 is subsequent, the same being clarificatory in nature can also be relied upon by the petitioner. In any case, it is a conscious decision of the respondents 1 to 3 to promote the petitioner. To put it differently, on being satisfied with his performance, he was promoted. The respondents 1 to 3 exercised the relevant circulars in promoting the petitioner. The impugned order was passed on dismissal of the writ petition filed by one T.T.V. Satyanarayana, challenging the imposition of punishment. This was taken note of by the Railway Board in passing the impugned order. Therefore, looking from a different perspective, we are unable to accept the contention of the learned counsel appearing for the petitioner.

8. Now, the petitioner has attained the age of superannuation. Therefore, the only question for consideration is the entitlement. Admittedly, from the year 2010 onwards, the order of reversion has been in force and the petitioner was working in the reverted post.

9. In such view of the matter, we are not inclined to give any back wages for him for the aforesaid period. However, even for the period in which the petitioner worked in the promoted post, certain deductions have been made. This is for the period from 2007 to 2010. This cannot be sustained in the eye of law as it is the respondents 1 to 3 who promoted the petitioner and the petitioner did work to the satisfaction of respondents 1 to 3 in the aforesaid promotional post. In any case, he is entitled to work in the promotional post in view of the findings rendered by us followed by conclusion. Therefore, while clarifying that the petitioner is not entitled for the difference in salary in the promotional post from the date of the impugned order till the date of retirement, we make it clear that the amount withheld by the respondents 1 to 3 from the year 2007 to 2010, the period for which the petitioner worked in the promotional post will have to be released to the petitioner. Similarly, his retirement benefits including pension will have to be calculated by treating the period from the date of the impugned order till the date of retirement as if he has worked in the promotional post. Appropriate orders will have to be passed within a period of eight weeks from the date of receipt of a copy of this order.

10. The impugned order dated 22.08.2013 stands set aside and the writ petition stands allowed. No Costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssm/mmi

To

1.The Secretary,
Railway Board,
Ministry of Railway,
Rail Bhavan, Raisina Road,
New Delhi 110 001.

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

3.The Financial Adviser &
Chief Accounts Officer/Traffic/Madras,
Southern Railway,
Chennai - 600 003.

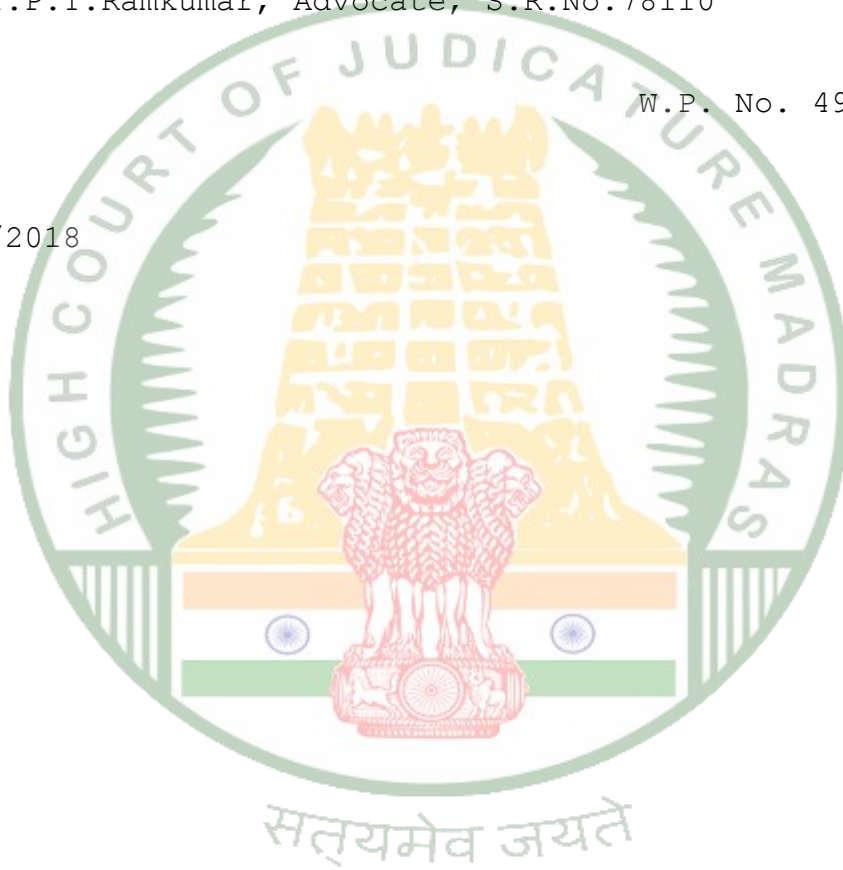
4.The Registrar,
Central Administrative Tribunal,
Madras Bench,Chennai.

+lcc to Mr.L.Chandrakumar, Advocate, S.R.No.77961
+lcc to Mr.P.T.Ramkumar, Advocate, S.R.No.78110

W.P. No. 4954 of 2016

SV(CO)

rrs 06/12/2018



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