

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.1.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.35556 of 2016

- 1 The Secretary to Government of India
Ministry of Finance
Department of Revenue
North Block New Delhi- 110 001.
 - 2 The Chairman
Central Board of Excise and Customs
Ministry of Finance
Department of Revenue
North Block New Delhi-110 001.
 - 3 The Chief Commissioner of Central Excise
Chennai Zone
No.26/1 Mahatma Gandhi Road
Nungambakkam Chennai-600 034.
 - 4 The Commissioner of Central Excise
Bibikulam Madurai-625 001.
- Petitioners

Versus

- 1 The Registrar
Central Administrative Tribunal
Madras Bench
Additional City Civil Court Complex
Madras High Court Campus Chennai-600 104.
- 2 Mr.T.Subbiah Nadar Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari to call for the records of the first respondent in O.A. No.310/01178 of 2014 dated 29.04.2016 and quash the same.

For petitioner : Mr.V.Sundareswaran
For R2 : Mr.S.Ramasamy Rajarajan
R1 : Tribunal

ORDER

(Order of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the parties.

2. By the order impugned in this writ appeal, the Central Administrative Tribunal has granted the relief of retrospective promotion of Deputy Commissioner of Central Excise to the second respondent herein after his retirement as Assistant Commissioner of Central Excise on par with his juniors and consequential monetary benefits, which is under challenge in this writ petition.

3. Though it could be justifiable with regard to consideration for promotion on the ground that his juniors have been placed above him as such he is entitled to be considered, but, the facts remains with regard to pay parity is concerned, it is relevant to note that the Apex Court in A.K.SOUMINI v. STATE BANK OF TRAVANCORE ((2003) 7 SCC 238) considered a similar situation and has held that in case of retrospective promotion, fixing of pay in the relevant pay scale notionally with suitable revision in pay scale itself is more than sufficient in law and in equity and the claim for arrears of pay is not sustainable on the principle of no work, no pay.

4. As such, though the order of the Tribunal to the effect that the second respondent herein would be entitled to retrospective promotion, can be sustained, since during the period of notional promotion, no work in the promotional post was carried out by the employee, he would not be entitled to arrears of pay except for the satisfaction of his claim with regard to parity of status.

5. Accordingly, the order of the Central Administrative is modified in view of the ratio laid down by the Supreme Court cited supra and the second respondent herein is entitled to only notional promotion on par with his juniors, however, it is hereby clarified that he will not be entitled to monetary benefits, much less arrears of pay, on the basis of the principles enunciated by the Apex Court in the decision cited supra. So far as arrears of pension is concerned, he would be entitled to get the same, but, without any interest on that amount. The writ petition is disposed of by modifying the order passed by the Central Administrative Tribunal to the extent indicated above. The arrears of pension as ordered above, shall

be calculated and disbursed to the second respondent within a period of three months from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

ssk.

To:

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 5. The Registrar
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- +1 CC to Mr.V. Sundareswaran, Advocate sr 4471.
+1 CC to Mr.S. Ramaswamy, Advocate sr 4635.

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BR(CO)
SP(12/03/2018)