

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.12.2018

CORAM:

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

W.P. No. 4498 of 2017

S. Srikantan

...Petitioner

Vs.

1. The Central Administrative Tribunal,
Chennai Bench,
Rep. By the Registrar,
City Civil Court Campus, High Court Building,
Chennai.
2. The Union of India
Rep. By its Joint Secretary (PSP & CPO)
Ministry of External Affairs,
Patiala House, New Delhi
3. The Deputy Secretary,
Ministry of External Affairs,
CPV Division (Cadre Cell - II)
New Delhi.
4. The Deputy Passport Officer (Cadre and Welfare)
Ministry of External Affairs,
CPV Division (Cadre Cell - II)
New Delhi.

...Respondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent in O.A. No.884/2013 dated 29.08.2016 confirming the order passed by the 3rd respondent in No. CDR-II/441/1/2011 dated 18.6.2012 and order passed by the 4th respondent in No. CDR-II/441/1/2001 dated 27.07.2012 and quash the same in so far as it denies the petitioner pay and allowances attached to the post of Superintendent with effect from 23.12.2000 and consequently direct the respondents 2 to 4 herein to disburse the arrears of pay and allowances attached to the post of Superintendent with effect from 23.12.2000.

For Petitioner :Mr. V. Vijay Shankar

For Respondents :R1 - Tribunal
Mr. D. Simon,
Central Government Standing Counsel
for R2 to R4.

O R D E R

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

This is the second round of litigation between the parties. On the earlier occasion, the petitioner, since reached the age of superannuation, approached the Tribunal challenging the orders passed by the respondents not considering him for promotion on the basis of adverse entry made, followed by rejection of his request for deletion. The Tribunal in O.A.No..263 of 2011 dated 30.03.2012 was pleased to pass the following order:-

"10. A perusal of the above would clearly show that in the instant case, the competent authority has not followed the instructions contained in the above DP&AR letter dated 20.5.1972 while issuing the order dated 20.12.2010 and rejecting the representation dated 3.9.2010. Therefore, we are of the considered opinion that prejudice has been caused to the applicant in not considering the representation as per the existing instructions in this regard. In such view of the matter, we are of the view that since the competent authority has failed to discharge his duties in deciding the representation of the applicant, no useful purpose will be served in sending his representation again for further consideration as the DPC has already met and juniors of the applicant have been promoted ignoring the claim of the applicant. Hence we are of the considered view that ends of justice will be met if we direct the respondents to convene a review DPC and consider the case of the applicant for promotion to the post of Superintendent within a period of three months from the date of receipt of a copy of this order without taking into account the adverse entries made in the ACR for the period 2008-09 and 2009-10.

11. In such view of the matter, the impugned order dated 17.1.2011 is hereby set aside and quashed."

2. The aforesaid order has become final and given effect to by the order dated 18.06.2012 by which the petitioner was given notional promotion to the post of Superintendent.

3. In the subsequent application filed in O.A.No. 884 of 2013, he sought for issue of actual pay from the date of his notional promotion. The Tribunal has rejected the application filed on the premise that having not worked for the aforesaid period, the petitioner is not entitled to pay. Challenging the same, the present writ petition has been filed.

4. The learned counsel appearing for the petitioner submitted that it is not as if the petitioner was not willing to work. Having passed an order notionally promoting him, the benefits will have to be extended. There is no Rule governing the rejection of such a request. In support of his contention, learned counsel has made reliance upon the decision of the Apex Court in Ramesh Kumar v. Union of India (2015) 6 MLJ 243 (SC).

5. Learned counsel appearing for respondents 2 to 4 would submit that the petitioner having not worked in the promoted post of Superintendent, cannot seek salary and other benefits. In support of his contention, he has also relied upon the Office Memorandum dated 25.01.2016.

6. The order passed by the Tribunal in O.A No. 263 of 2011 dated 30.03.2012 has become final. The Apex Court in Ramesh Kumar (supra) considering the legal issue with respect to 'No Work No Pay' was pleased to hold that in a case where an employee was ready and willing to work, the aforesaid principle cannot be applied. The following paragraph would be apposite:-

"13. We are conscious that even in the absence of statutory provision, normal rule is "no work no pay". In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of "no work no pay" would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and

maintaining his seniority along with his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar."

7. No doubt, the Tribunal has passed an order only after finding a procedural non-compliance on the part of the respondents. However, we are concerned with the effect of the order passed by the Tribunal coupled with the order promoting the petitioner as Superintendent. The Office Memorandum relied upon by the learned counsel for respondents 2 to 4 has got no application as that pertains to promotion of Government servant exonerated after retirement. The procedure prescribed therein is meant for Government Servant who has been exonerated subsequently. We are dealing with a different case on hand. Thus, we are of the view that Office Memorandum has got no application at all. The petitioner was always ready and willing to work. Now he has attained the age of superannuation. Therefore, we deem it appropriate to direct the respondents to pay 50% of the pay from the date of notional promotion of the petitioner till the date he actually assumed charge. This will come along with allowances. We are concerned with the approximate period of 18 months.

8. Therefore, instead of remitting it and asking the respondents to reconsider, we are inclined to pass an order directing to pay 50% of the pay, particularly when the petitioner has reached the age of superannuation. We are passing this order by taking into consideration the order passed by the Apex Court, referred supra.

9. In such view of the matter, this writ petition is disposed of by directing the respondent to pay 50% of the pay and allowances in the post of Superintendent from the date of notional promotion till the date of his actual taking charge. Appropriate orders will have to be passed within a period of 12 weeks from the date of receipt of a copy of this order. No costs.

10. Accordingly, the writ petition stands disposed of.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssm

To

1. The Registrar,
Central Administrative Tribunal, City Civil Court Campus,
High Court Building,
Chennai.
2. The Joint Secretary (PSP & CPO)
Union of India
Ministry of External Affairs,
Patiala House, New Delhi
3. The Deputy Secretary,
Ministry of External Affairs, CPV Division (Cadre Cell - II)
New Delhi.
4. The Deputy Passport Officer (Cadre and Welfare)
Ministry of External Affairs,
CPV Division (Cadre Cell - II)
New Delhi.

+1cc to Mr.V.Vijay Shankar, Advocate Sr.85254
+1cc to Mr.D.Siman, CGSC, Sr.85683

W.P. No. 4498 of 2017

sj[col
srg 10/01/2019

WEB COPY