

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.11.2018

CORAM
THE HONOURABLE Mr. JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.8660 of 2017 and
WMP No.9485 of 2017

Niranjan Kumar Choudhary

... Petitioner

Vs.

- 1.Union of India,
Represented by its Secretary,
Ministry of Defence,
Department of Defence Production,
South Block, New Delhi - 110 001.
- 2.The Chairman,
Ordnance Factories Board,
10-A, S.K.Bose Road, Kolkatta - 700 001.
- 3.The General Manager,
Cordite Factory,
Aruvankadu - 643 202, Nilgiris.
- 4.The Principal Controller of Accounts (Factories)
10-A, SK Bose Road, Kolkatta - 700 001.
- 5.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the connected records leading to the issue of the impugned order passed by the 5th respondent dated 14.12.2016 passed in O.A.No.1691 of 2014 and quash the same and for a consequential direction to the respondents to restore the pay of the petitioner as originally fixed on his repatriation to the parent cadre in October 2011 with all attendant benefits on such restoration.

For Petitioner : Mr.Muthukumar
for M/s.Paul and Paul

For Respondents: Mr.C.V.Ramachandramurthy
for R1 to R4
R5 - Tribunal

O R D E R
(delivered by M.M.SUNDRESH, J.)

The petitioner joined the Indian Ordnance Factories Services as Assistant Works Manager in the year 1986. Thereafter, he was promoted as Joint General Manager on 13.04.1998. While working so, he was deputed to Ministry of Finance, Department of Economic Affairs in Senior Administrative Grade (SAG), in which capacity, he worked for 6 years and 10 months. After completion, he was reverted back to the parent department.

2. The petitioner sought for increment which he would have been entitled to had he continued in service in the department to which he was deputed and worked. However, the request made by the petitioner was rejected followed by recovery. The said order was challenged before the Tribunal. The Tribunal by placing reliance upon Paragraph 7.5 of DoPT Office Memorandum dated 17.06.2010 was pleased to dismiss the application. Hence, the present writ petition.

3. The learned counsel for the petitioner submits that the petitioner is interested in increment alone and not pay fixation in the parent department. Therefore, he is not challenging the pay scale fixed in the parent department as against the one fixed in the department to which he was deputed.

4. Paragraph 7.5 of DoPT OM has to be interpreted to mean that the petitioner is entitled for increment for the services rendered by him in the deputed department. In any case, recovery cannot be sustained since the petitioner has attained the age of superannuation and therefore, the exceptions carved out by the Hon'ble Apex Court in State of Punjab and Others v. Rafiq Masih (Wither Washer) and others [(2015) 4 SCC 334] would apply to the case on hand.

5. The learned counsel for respondents 1 to 4 would submit that Paragraph 7.5 of the DoPT Office Memorandum dated 17.06.2010 would apply to the case of the petitioner, because, at the time of passing the impugned order and at the time of filing the application, the petitioner did not reach the age of superannuation, as he was in service. Therefore, the order of the Apex Court in State of Punjab (cited supra) has got no application.

6. On the issue pertaining to increment, we do not find any merit in the submission made by the learned counsel for the petitioner. For better appreciation, we place on record Paragraph 7.5 of DoPT OM dated 17.06.2010:-

"7.5 Increments- The employee will draw increment in the parent cadre grade or in the scale of pay/grade pay attached to the deputation post as

the case may be, depending on whether he has opted for the parent cadre pay plus deputation (duty) allowance or the pay scale/grade pay of the deputation post. If he has opted for pay scale/grade pay of the deputation post, notional increments shall also continue to accrue to him in the post held on regular basis in the parent cadre/organization for the purpose of regulation of pay on repatriation to the parent post at the end of the tenure."

7. The aforesaid provision makes it clear that once the employee was reverted back to the parent department, the increments in that department alone would be taken into account notwithstanding the fact that he was earlier working on deputation somewhere else. Therefore, the contention raised by the learned counsel for the petitioner cannot be accepted. Accordingly, the same stands rejected.

8. Coming to the second issue, it is not as if the petitioner has fixed and received the increments on his own; may be, the petitioner was incharge of the branch. However, the increment was not directed to paid by him to himself. It was done by another wing of the department. Even it is not the case of the respondents that increments have been drawn and encashed by the petitioner deliberately and knowingly. The fact remains that the petitioner has attained the age of superannuation now. As per the records, the petitioner has to pay a sum of Rs.2,67,653/-.

9. In our considered view inasmuch as the petitioner is not responsible for the aforesaid situation, coupled with the further fact that he has attained the age of superannuation, recovery sought to be made cannot be sustained. Moreover, it is not a case of willful or deliberate suppression involving dishonest intention on the part of the petitioner. Therefore, the prayer of the petitioner in so far as recovery of a sum of Rs.2,67,653/- towards increments received already alone is allowed. We also make it clear that the department is at liberty to fix the pay scale as per Paragraph 7.5 of DoPT OM dated 17.06.2010 and FR 22(IV).

10. In the result, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

svki

To

1.The Secretary,
Union of India,
Ministry of Defence,
Department of Defence Production,
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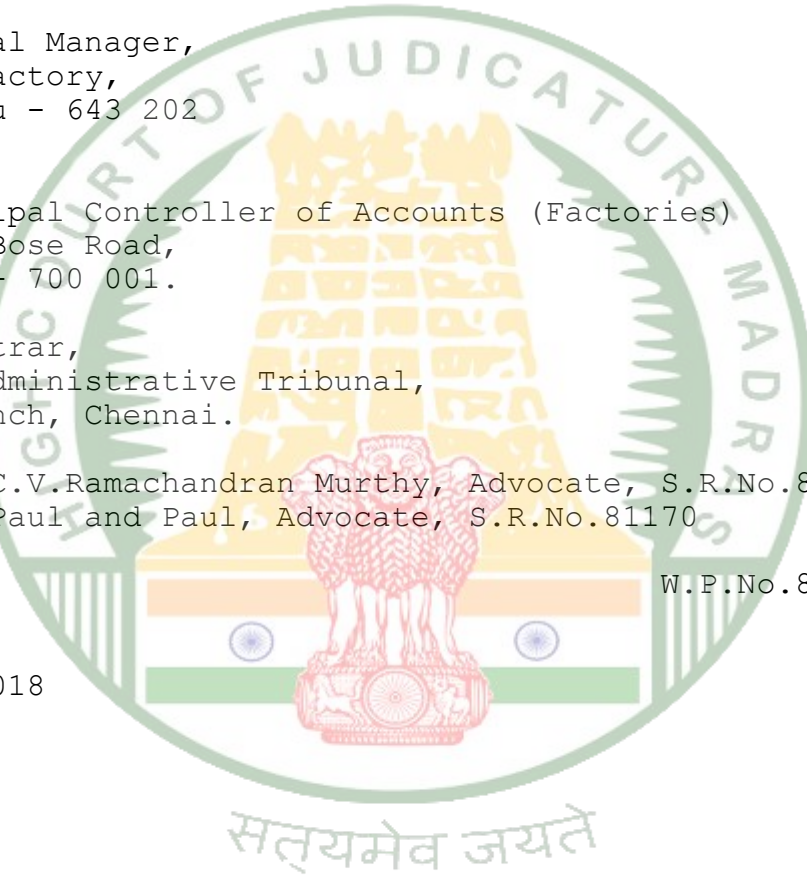
5.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

+1cc to Mr.C.V.Ramachandran Murthy, Advocate, S.R.No.80985
+1cc to Mr.Paul and Paul, Advocate, S.R.No.81170

W.P.No.8660 of 2017

KAN (CO)

rrs 20/12/2018



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