

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.11.2018

CORAM:

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

W.P. No. 15677 of 2017

and

W.M.P.No.16968 of 2017

M. Ramakrishnan

...Petitioner

Vs.

1. The Central Administrative Tribunal,
Chennai Branch,
Rep. By its Registrar
City Civil Court Building,
High Court Complex, Chennai - 104.
2. The Union of India,
Rep by Chief Staff Officer (P&A),
Head Quarters, Eastern Naval Compound,
Naval Base, Vishakapattinam - 4.
3. The Commanding Officer,
INS Kattabomman,
Naval Base, Vijayanarayanam,
Tirunelveli .

...Respondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus by calling for the records of the 1st respondent Tribunal in O.A 1563/2014 dated 22.11.2016 confirming the order passed by the 2nd respondent in its proceedings CE/9148/10(ii) dated 28.10.2013 (communicated by order dated 30.10.2013) and quash the same and consequently direct the respondents 2 and 3 to grant all attendant and consequential benefits such as back wages, benefits under the ACP Scheme, periodical annual increments and the remaining portion of the subsistence allowance to the petitioner by treating the period from 06.07.2002 to 13.08.2008 as duty for all purpose.

For Petitioner : Mr. V. Vijay Shankar

For Respondents : R1 - Tribunal
Mr. C.V. Ramachandramurthy,
for R2 and R3
ORDER

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

Challenging the order of the first respondent dated 22.11.2016, confirming the order passed by the 2nd respondent dated 28.10.2013 and for a consequential direction to respondents 2 and 3 to grant all attendant and consequential benefits such as back wages, benefits under the ACP Scheme, periodical annual increments and the remaining portion of the subsistence allowance to the petitioner by treating the period from 06.07.2002 to 13.08.2008 as duty for all purpose, the present writ petition has been filed.

2.The petitioner joined the service as Peon in the third respondent office. A criminal case was registered against the petitioner in Crime No.34 of 2002, which after filing a charge sheet, got converted in to C.C. No. 3 of 2003 and he was accordingly acquitted. In another case also, the petitioner was acquitted. An order of suspension was passed against the petitioner during the pendency of the criminal case.

3. By the impugned order, a request was made by the petitioner to treat the period of suspension as one of duty for the purpose of fixation of pay by taking note of financial upgradation, incentives and increase of pay by the Pay Commission was rejected for the second time after an order of remand by the Tribunal. Thereafter, the petitioner filed another Original Application, which was dismissed by the Tribunal. Hence, the present writ petition.

4.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for respondents 2 and 3.

5. The learned counsel appearing for the petitioner would submit that what the petitioner seeks is only continuity of service by taking into consideration the incentives, financial upgradation and pay revision made pursuant to the Pay Commission's decision on par with similarly placed persons for the purpose of fixing the pay in future. Therefore, the petitioner does not want any payment for the period of suspension though under FR 54 (B) (5), he is entitled to the same, subject to the discretion to be exercised by respondents 2 and 3. Reliance has been made on the two decisions of the Apex

Court in Union of India and others v. Jaipal Singh (AIR 2004 SC 1005 and Banshi Dhar v. State of Rajasthan and another (2007) 1 SCC 324.

6. The learned counsel appearing for respondents 2 and 3 would submit that the order has been correctly passed by the Tribunal in exercise of the power under FR 54(B) (5). Since the petitioner was involved in the criminal cases, he is not entitled for any pay or allowances. That is the reason why the impugned order was passed that they would be taken note of at the time of reckoning the retrial benefits.

7. FR 54(B) (5) gives right to a Government servant to pay and allowances after the termination of the proceedings in his favour during the period of suspension on the footing that he should be treated as if he had not been suspended. However, this right is subject to the discretion to be exercised by respondents 2 and 3 in determining the lesser amount after due notice. We are not concerned with this provision in the case on hand, in view of the specific stand taken by the petitioner that he does not want any actual payment of salary or allowances during the period of suspension. What he actually wants is a notional fixation for the aforesaid period to be reckoned for further fixation of pay.

8. In other words, the incentives, financial upgradations which is inclusive of revised pay scale pursuant to the decision of the Pay Commission are to be taken into consideration and reckoned while fixing the pay subsequently and for that purpose, the petitioner has to be reckoned as continuing in service. We find that FR 54 (B) cannot be exercised to continue this right. If any interpretation contrary to it is given, it will amount to punishment to an employee, notwithstanding the fact that he has been discharged. We make it clear that FR 54(B) only speaks about the payment of salary and allowances for the period of suspension alone.

9. In such view of the matter, the writ petition stands allowed by directing respondents 2 and 3 to fix the pay of the petitioner by taking into consideration the salary, which is inclusive of incentives, financial upgradation and revision of pay scale by the Pay Commission notionally with continuity of service during the period of suspension for the purpose of fixation of pay. Appropriate orders will have to be passed within a period of eight weeks from the date of receipt of a copy of this order. We make it clear that the petitioner is not entitled for actual payment or allowances during the period of

suspension. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm/mmi

To

1. The Registrar,
Central Administrative Tribunal,
Chennai Branch,
City Civil Court Building,
High Court Complex, Chennai - 104.
2. The Chief Staff Officer (P&A),
Head Quarters, Eastern Naval Compound,
Naval Base, Vishakapattinam - 4.
3. The Commanding Officer,
INS Kattabomman,
Naval Base, Vijayanarayanam,
Tirunelveli.

W.P. No. 15677 of 2017

KS (CO)
GSP (04/12/2018)

सत्यमेव जयते
WEB COPY