***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

***THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

and

***THE HON'BLE SRI JUSTICE M. GANGA RAO**

+Writ Petition No.6790 of 2016

% 25-01-2018

Between:

Union of India, represented by its Secretary,
Railway Board, Ministry of Railways, Rail Bhavan,
New Delhi and 5 others

… Petitioners

Vs.

P. Veerabhadra Rao, (Supervisor-Retd),
Resident of D.No.70-2-80/1, Ramayyapeta,
Kakinada, East Godavari District and another

.. Respondents

! Counsel for petitioners : Mr. Pushpinder Kaur,
standing counsel

^ Counsel for respondents: Mr. J. Prabhakar,

< Gist:

> Head Note:

? Cases referred:

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE M. GANGA RAO

Writ Petition No.6790 of 2016

ORDER: ***(V. Ramasubramanian, J)***

The South Eastern Railway has come up with the above writ petition, challenging an order of the Central Administrative Tribunal, directing the management to fix the pay of the 1st respondent herein in the Scale of Pay of Rs.5000-8000, treating him under new nomenclature given to the post of Supervisor i.e. Junior Engineer-II under the 5th Pay Commission and consequently to revise his pension with effect from 01-11-2003.

2. Heard Mr. Pushipinder Kaur, learned standing counsel for the writ petitioners and Mr. J. Prabhakar, learned counsel appearing for the 1st respondent.

3. The 1st respondent was appointed on 09-07-1963 in the Railway Service. After completing 37 years of service, he took voluntary retirement with effect from 14-08-2000, as per the orders passed on 20-06-2000.

4. At the time of taking voluntary retirement, the 1st respondent was employed as Supervisor, drawing pay in the Scale of Pay of Rs.4500-7000. The post of Supervisor was later upgraded and re-designated as Junior Engineer-II with effect from 01-11-2003, in terms of a Circular No.152/2003 in the Scale of Pay Rs.5000-8000. Later the scale of pay was revised to Rs.9300-34800 with a grade

pay of Rs.4200, on the basis of the recommendations of the 6th Pay Commission.

5. It appears that persons identically placed as 1st respondent herein, who retired during the period from 01-01-1986 to 30-09-2003, approached the Central Administrative Tribunal at Chandigarh claiming the benefit of the revised pay scale of Rs.5000-8000, on the ground that the post held by them got restructured with effect from 01-11-2003. The Central Administrative Tribunal dismissed the Original Applications, but the High Court of Punjab & Haryana allowed a writ petition in CWP.No.9581 of 2011 filed by the retirees.

6. Challenging the order of the High Court of Punjab & Haryana, the Railway Administration filed a Special Leave Petition, but the same was dismissed by an order dated 27-09-2012 by the Hon'ble the Supreme Court.

7. Therefore, the 1st respondent herein made a representation on 18-07-2003 seeking extension of the same benefit to himself. But the claim was rejected by an order dated 22-01-2014. Therefore, the petitioner made another representation and the same was also rejected by an order dated 05-06-2014. Challenging the order dated 05-06-2014, the 1st respondent filed O.A.No.1002 of 2014 on the file of the Central Administrative Tribunal, Hyderabad Bench. The same was allowed by the Tribunal, following the judgment of the Punjab & Haryana. Aggrieved by the said order, the South Eastern Railway is before us.

8. The main ground on which the Railway Administration has come up with the above writ petition is that the 1st respondent is not

entitled to the benefit of the judgment of the Punjab & Haryana High Court, as he retired on voluntary retirement before the restructuring of the cadre took place and that the issue is already settled by several decisions of the Hon'ble Supreme Court.

9. We have carefully considered the above submissions.

10. Since the Tribunal simply followed the decision of the Punjab & Haryana High Court, it may be necessary to see whether the judgment of the High Court of Punjab & Haryana laid down any ratio on a matter of policy, so as to enable the 1st respondent to seek the extension of the same benefit to his favour.

11. It is seen from the decision of the Punjab & Haryana High Court that the same comprises of 7 paragraphs. The first paragraph indicates the order under challenge, the second paragraph narrates the claim of the petitioner before the Court, the third paragraph elicits the matter of fact that the post of Maistry-cum-Supervisor got upgraded as Junior Engineer. The 4th paragraph contains the contention of the learned counsel, who appeared for the petitioners and also an extract from a letter dated 04-06-2001 addressed by the Government of India to the Northern Railways. The contents of paragraph 4 of the judgment of the Punjab & Haryana High Court are followed by another paragraph, which also contains the very same paragraph number 4. This second paragraph 4 records the objection of the Railway Administration to the claim. Thereafter, the Punjab & Haryana High Court proceeded to record its reasonings in paragraph 5 of its decision. This is followed by the operative portion

of the judgment in paragraph 6. Paragraphs 5 and 6 of the decision of the Punjab & Haryana High Court read as follows:

> "5. Having heard learned counsel for the parties, we are of the considered view that once the post of Mistri-cum-Supervisor has acquired a new nomenclature and it has also been given higher scale of pay then the cosmetic cover which has been put forward by the respondent cannot be permitted to hide the real face of the erstwhile Mistri/Supervisor. For all instants and purposes, they would all be treated as Junior Engineer-II. Once the pay scale of the post of Mistri/Supervisor is deemed to be revised then their pension is also be required to be re-fixed w.e.f. 1.11.2003.
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> 6. As a sequel to the above discussion, the writ petition is allowed. The judgment of the Tribunal is set aside. It is directed that respondents shall re-fix the pay of the petitioners in the pay scale of Rs.5000-8000 by treating them under new nomenclature given to the post of Mistry-cum-Supervisor i.e. Junior Engineer-II. Accordingly, their pension be revised w.e.f. 01.11.2003. However, arrears of pension shall be confined to three years from the date of preceding the date of filing of the original application i.e. November, 2009."

12. It is clear from the above that the legal issue as to whether a pensioner would be entitled to revision of pension, as and when a post is restructured and upgraded after his retirement, was not considered by the Punjab & Haryana High Court. The reasonings contained in paragraph 5 of the judgment of the Punjab & Haryana High Court do not at all deal with the question whether an upgradation and revision of pay can have an impact upon the pension, long after the retirement of the individual.

13. Therefore, with great respect, we are unable to apply the decision of the Punjab & Haryana High Court blindfold in favour of the 1st respondent. The Tribunal, has its own limitations and hence, found itself bound by the decision of the Punjab & Haryana High Court, but we are not. Hence, we shall take up for consideration the

core issue whether the 1st respondent will be entitled to the benefit of the upgradation and restructuring, which happened more than 3 years after the voluntary retirement of the 1st respondent.

14. Admittedly, the 1st respondent retired on 14-08-2000, in the post of Supervisor, on a scale of pay of Rs.4500-7000. The restructuring and upgradation of the post took place with effect from 01-11-2003. The restructuring was ordered with prospective effect, in favour of serving employees. The circular does not talk about either the extension of the benefit with retrospective effect or the revision of the pension of the persons, who had retired before the cut off date.

15. It must be noted that as and when recommendations of the Pay Commission are implemented, a separate provision is made for the revision of the pension of those, who had retired before the date of implementation of the recommendations of the Pay Commission. It is only by virtue of such recommendations and acceptance of the recommendation by the Government of India that persons, who retired before the date of implementation of the recommendation of the Pay Commission, get the benefit of a revision of the pension.

16. But in cases where restructuring of cadres and upgradation take place in between two Pay Commissions, the benefit of the same cannot be extended to persons, who have already retired, unless the benefits are specifically extended by orders of the Government of India.

17. The 1st respondent has not brought to our notice any circular issued by the Ministry or the Railway Board extending the benefit of the restructuring and upgradation in favour of the retirees. The Punjab & Haryana High Court relied upon the letter dated 09-10-2003 issued by the Railway Board and Circular on 16-10-2003. But this letter did not contain any reference to persons, who had already retired. The Punjab & Haryana High Court also referred to a letter dated 04-06-2001 sent by the Government of India to the Northern Railways. This letter also did not contain any reference to retirees.

18. Therefore, in the absence of any material to show that the benefit of restructuring was extended with retrospective effect, it is not possible for this Court to extend the benefit.

19. Mr. J. Prabhakar, learned counsel appearing for the 1st respondent invited our attention to another judgment of the Punjab & Haryana High Court in ***Union of India v. Darshan Lal Bali*** (decided on 29-01-2015 in CWP.No.8563 of 2014 & batch). But in the said decision, the Punjab & Haryana High Court merely chose to follow its own earlier decision in ***Agia Ram and others v. Union of India & others (CWP.No.9581 of 2011)***, as the Special Leave Petition arising out of the said decision had been dismissed by the Supreme Court. After the dismissal of the SLP as well as the review petition, the Railway Administration implemented the decision in **Agia Ram**'s case, and hence, the Punjab & Haryana High Court thought it fit to follow its previous decision in **Agia Ram.**

20. But unfortunately, the decision in **Agia Ram'** did not lay down any proposition of law to the effect that as and when a cadre was restructured, the benefit of the same should be extended, even to those who had already retired. Therefore, the second decision of the Punjab & Haryana High Court also does not persuade us to follow the same.

21. Mr. J. Prabhakar, learned counsel for the 1st respondent contended that when one set of employees have been granted a benefit, the same should be extended to all other identically placed persons. But as pointed out by the Supreme Court in ***State of Uttar Pradesh v. Arvind Kumar Srivastava and others***[1], the said Rule is not without exceptions. Though in the said case, the Supreme Court pointed out only those exceptions in the form of laches, delay and acquiescence, the list is not exhaustive. In cases where the benefit is granted by one Court without going into the legal issues involved, the same cannot be followed as a precedent merely by invoking Article 14 of the Constitution.

22. An argument was advanced on the basis of the voluntary retirement of the 1st respondent. It was claimed by the Railway Administration that a person, who went on voluntary retirement, cannot claim parity of treatment. In support, the decision of the Supreme Court in ***Manojbhai N. Shah v. Union of India***[2] was relied upon. But as rightly pointed out by Mr.J. Prabhakar, learned counsel for the 1st respondent, employees going on voluntary retirement under a special scheme, with added benefits, stand on a different

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[1] (2015) 1 SCC 347
[2] (2015) 4 SCC 482

footing than those who go on voluntary retirement in terms of the Fundamental Rules.

23. In any case, the issue of the 1st respondent going on voluntary retirement, is not of any significance since we have found even on merits that the benefit of the restructuring and upgradation ordered with effect from 01-11-2003 was not extended to those who retired earlier. A restructuring and upgradation granted on the basis of the recommendations of the Pay Commission stand on a different footing, than the restructuring done in between two Pay Commissions. Such restructurings, unless specifically extended even to persons not in service, cannot be claimed by retirees.

Therefore, the writ petition is allowed and the order of the Tribunal is set aside.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

Date: 25-01-2018

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