

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.5608 of 2010

S.Elumalai

... Petitioner

Vs.

1. The Managing Director,
Tamil Nadu Transport Corporation Ltd.,
(Division-I), Salem 636 007.

2. The General Manager,
Tamil Nadu Transport Corporation Ltd.,
(Division-I), Salem 636 007.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records connected with the proceedings of the 2nd respondent (vide proceedings No.Ka.No.E5/15007/TNTCL(Salem) 2009, dated 15.06.2009) and the consequential order of the 1st respondent passed in proceedings No.Ku.No.380/15002/D5/TNTCL/2003-2009, dated 17.09.2009 and quash both of them and thereby direct the respondent committee to consider the case of the petitioner for the 2nd review on 01.05.2001 and allow him the consequential legitimate benefits.

For Petitioners : Ms.S.Girija

For Respondents : Ms.S.Rajeni Ramadas

O R D E R

The petitioner by this writ petition is challenging the proceedings passed by the General Manager, Tamil Nadu Transport Corporation Ltd., (Division-I), Salem 636 007, (vide proceedings No.Ka.No.E5/15007/TNTCL(Salem) 2009, dated 15.06.2009) and the consequential order of the Managing Director, Tamil Nadu Transport Corporation Ltd., (Division-I), Salem 636 007.

2. The petitioner joined as a Conductor on 20.02.1984. His services was regularized on 01.06.1985. As per 12(3) wage settlement, which was arrived at between the management and trade union was fixed in pay scale of rs.5305-90-6025-100-8225.

As per the service rule, the first review for the purpose of giving increment was conducted after six years of qualifying service from the date of appointment. The scale of pay revised as Rs.5435-115-8885. The second review was conducted after eight years of qualifying service from the date of second review and the scale of pay again revised as Rs.5505-115-6655-120-9055.

3. The case of the petitioner is that the second review was sanctioned only on 01.08.2003 instead of 01.05.2001 and therefore, the petitioner is entitled to the benefit of the second review from 01.05.2001 and not from 01.08.2003. The petitioner states that no reason has been communicated as to why the review was not sanctioned.

4. Heard the counsel for the parties.

5. The learned counsel for the petitioner vehemently argued that the petitioner is being victimized. The second review has been denied to the petitioner without communicating any reason to the petitioner. On the other hand, the learned counsel for the respondent would state that during the service of the petitioner, the following punishments were imposed on him:-

1	26.10.1985	Refused to attend the allotted work	Severely warned
2	30.12.1985	Fare not collected while on duty in the bus TMN6506	Fine Rs.10/-
3	30.04.1989	Performed duty without licence.	Increment postponed for 3 months without cumulative effect
4	18.12.1992	While on duty in the bus TN 27 / 0215 collected actual fare, but ticket issued for less fare	Basic pay reduced by one stage
5	16.11.1992	While on duty in the Bus TN 27 0215 remitted less collection amount.	IPP for 6 months without cumulative effect.
6	30.03.1996	Partly responsible for fatal accident	IPP for 1 year without cumulative effect

1	26.10.1985	Refused to attend the allotted work	Severely warned
7	11.08.1996	While on duty in the bus TN 27/N 0605, fare collected but ticket not issued.	IPP for 1 year without cumulative effect and suspension period of 23 days treated as eligible leave.
8	11.03.1999	While on duty in the Bus TN 27/N 0673 remitted less collection amount.	IPP for 3 months with cumulative effect.
9	04.04.2000	Unauthorizedly absent	Fined Rs.25/-
10	30.06.2003	While on duty in the Bus TN 27 /132 fare not collected	IPP for 6 months without cumulative effect.
11	30.05.2003	While on duty in the Bus No. 1093 actual fare collected but ticket issued for less fare.	IPP for one year without cumulative effect. Suspension period treated as eligible leave.
12	17.08.2006	Misbehavior with passenger	Censured
13	09.10.2008	Not entered P.Velur Bus stand	Censured

6. The learned counsel for the petitioner would state that the review is not automatic and it depends upon the performance of the petitioner. The learned counsel for the respondent relies on Rule 61(e) of the Common Service Rules. Rule 61(e) which deals with review of advancement from one scale to another of employees in working Group/Miscellaneous Group. The same reads as under:-

“(e) The advancement to a higher scale within a working Group/Miscellaneous Group on completion of the prescribed length of qualifying service shall be on the basis of performance of the individual with reference to norms and shall not be automatic.”

7. The learned counsel for the respondent would state that in view of the performance of the petitioner and the punishments imposed on him, the Review Committee found that the petitioner is not entitled to the benefit of the review which is for the purposes of advancement to the next scale. The learned counsel for the petitioner also filed the proceedings of the Review Committee.

8. Keeping the performance in mind, the review was postponed by one year. The case of the petitioner for review was once again considered for 01.05.2002 and it was postponed for the period of six months. The petitioner contends vehemently that the recommendation of the Committee for the review on 01.05.2002 has not been given which automatically would show that the petitioner was entitled to a review for 01.05.2002. This Court cannot accept the contention because the Review Committee for 01.05.2003 states that the review on 01.05.2002 had been postponed for the period of six months. Similarly, in the review conducted for 01.11.2002 again the case of the petitioner was postponed by another six months. Finally, the benefit of the review was granted on 01.05.2003.

9. As rightly pointed out by the learned counsel for the petitioner the review is not automatic, the conduct of the workmen is a major indicator to grant the benefit of advancement of scale. In view of the fact that the petitioner has been awarded number of punishments from the time he joined, this Court does not see any infirmity in the order postponing the benefit of the review for the period of two years.

10. Writ petition is dismissed. No Costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pkn.

To

1. The Managing Director,
Tamil Nadu Transport Corporation Ltd.,
(Division-I), Salem 636 007.

2. The General Manager,
Tamil Nadu Transport Corporation Ltd.,
(Division-I), Salem 636 007.

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SS (CO)
GN(04/10/2019)