

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.P.Nos.22604 to 22606 of 2012

N.Vijayakumar

.. Petitioner in
all the W.Ps

Vs

1.Union of India rep. by the
Chairman - Railway Board,
New Delhi - 110 001.

2.The General Manager,
Southern Railway, Park Town,
Chennai - 3.

3.The Chief Personnel Officer,
Southern Railway, Park Town,
Chennai - 3.

4.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai - 104.

.. Respondents in
all the W.Ps

W.P.No.22604 of 2012: Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records from the fourth respondent, quash the order in Diary No.2963 of 10 together with the order in MA No.523 of 10 dated 31.08.2010 and consequently direct the railway administration to implement the order dated 15.12.1993 in O.A.No.951 of 1992 of the Central Administrative Tribunal, Madras.

W.P.No.22605 of 2012: Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records from the fourth

respondent, quash the order dated 15.09.2011 in O.A.No.99 of 2010 and consequently allow O.A.No.99 of 2010.

W.P.No.22606 of 2012: Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records from the fourth respondent, quash the order dated 15.09.2011 in O.A.No.296 of 2010 and consequently allow O.A.No.296 of 2010.

For Petitioner .. Mr.K.M.Ramesh
in all W.Ps

For Respondents .. Mr.S.R.Sundaram
for R1 to R3 in all W.Ps
R4 - Tribunal in all W.Ps

COMMON ORDER

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

This appears to be a second round of litigation by the petitioner taking umbrage under the observation made on the earlier round of litigation by the Division Bench in W.P.No.16697 of 1998 dated 04.04.2002.

2.The sum and substance of the petitioner's grievance is that he should be absorbed in the higher scale of pay at Rs.1200-1800 or Rs.1320-2040. This grievance was rejected by the Tribunal. After noting the reasoning of the Tribunal, it was accordingly upheld by the Division Bench of this Court in the writ petition referred above. However, liberty was given to the petitioner to move the Tribunal for protection of pay that was drawn by him prior to the promotion. The following paragraphs would be apposite:

4.Again in para 17, the Tribunal has held -

"In the light of the discussion above, we cannot allow the relief sought for by the applicants for absorption in higher pay scales. They can be absorbed against Group C pay scale of Rs.950-1500 only. We also hold that the scheme for absorption conveyed in Railway Board's letter of 24.05.1995 is in consonance with the direction given by this Tribunal in its order of 15.12.1993. However, we quash all the orders in these OAs (except in OA 907/96) by which the applicants therein have been

empanelled in Group D pay scales. All these applicants shall be given one more opportunity to exercise their option to get empanelled for absorption in the Group C cadre in the pay scale of Rs.950-1500 as per the provision contained in para 2(b) of the Scheme. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order by the respondent."

5. Thus a reading of the above stated reasoning of the Tribunal in the order impugned in the Writ Petition disclose that the same was in full compliance with the earlier direction of the Tribunal dated 15.12.1993 made in O.A.No.951 of 1992. A reading of para 32(iv) of the said order dated 15.12.1993 clearly shows that what was directed by the Tribunal was to absorb the petitioners in the grade in which they were working against the 25% of the promotion quota in skilled category posts for serving employees. As far as the scale of pay was concerned, the direction makes it clear that the absorption against the said quota should be considered in the appropriate category of skilled post in the scale of pay of Rs.1320 - 2040. Therefore, while the direction for absorption was in unambiguous terms, as far as the fixation of scale of pay was concerned, the respondents were only directed to consider the scale of pay drawn by the petitioners namely Rs.1320-2040 while absorbing the petitioners in the appropriate cadre of skilled posts. Therefore when the absorption in the 25% of the promotion quota in skilled category could be made only in Grade III of Group C in the pay scale of Rs.950-1500 and when there is no provision of such absorption in any higher grades of Group C either in the pay scales of Rs.1200-1800 or Rs.1320-2040 which are stated to be intermediary grades of skilled artisans, there was absolutely no justification for the petitioners in complaining that they were not absorbed in the said scale of pay, namely, 1320-2040. We therefore fully endorse the reasoning of the Tribunal in rejecting the claim of the petitioners seeking for absorption in the higher scale of pay of Rs.1320-2040. We do not find any flaw in the said reasoning which is in consonance with the relevant para 2007 of the IREM Vo.III which provides the filling up of 25% of promotion quota of serving employees in the skilled category. There is, therefore, no scope for interfering with the order of the Tribunal impugned in this writ petition.

In the result, the writ petition fails and the same is dismissed. No costs. Consequently, W.M.P. is closed.

After the pronouncement of the order dismissing the writ petition and confirming the order of the Tribunal, Ms.R.Vaigai, learned counsel for the petitioners seeks opportunity to move the Tribunal for protection of the pay that was drawn by the employees prior to the promotion. We make it clear that it is open to the petitioners to move the Tribunal seeking for appropriate relief and the Tribunal may consider that claim on its own merits.

3.The petitioner misconstrued the observation of this Court and once again sought the same relief, which was rightly rejected by the Tribunal inter alia holding that it is a re-adjudication in a different form. Challenging the same, the present writ petitions have been filed.

4.Learned counsel appearing for the petitioner submitted that the Division Bench of this Court has given liberty to move the Tribunal for protection of pay and therefore, the order of the Tribunal requires interference.

5.Learned counsel appearing for respondents 1 to 3 would submit that it is only re-adjudication in a different form and the petitioner did not seek for protection of pay that was drawn prior to the promotion.

6.As rightly submitted by the learned counsel appearing for respondents 1 to 3, the petitioner wanted to re-adjudicate the same issue in a different form by misinterpreting the observation made by this Court. This Court merely stated that it is open to the petitioner to approach the Tribunal seeking protection of pay that was already drawn by the employee prior to promotion. This is something different than the one sought for by him. This would only mean that the pay, which was drawn by him, in the event of being sought to be recovered, an approach can be made to the Tribunal. As of now, there was no such attempt. Therefore, we make it clear that the observation of the Division Bench is only for the protection of the petitioner's pay that was already drawn. We do not wish to direct the petitioner to approach the Tribunal at this point of time. Law is also quite settled that when the employee was not at fault, then the recovery cannot be made as a matter of course.

7.In such view of the matter, while rejecting the contentions on merit, respondents 1 to 3 are hereby directed not to resort to any recovery of the pay which has already been drawn by the petitioner.

8.With the aforesaid observation and direction, these writ petitions stand disposed of. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

mmi

To

- 1.The Chairman - Railway Board,
New Delhi - 110 001.
- 2.The General Manager,
Southern Railway, Park Town,
Chennai - 3.
- 3.The Chief Personnel Officer,
Southern Railway, Park Town,
Chennai - 3.
- 4.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai - 104.

+1cc to Mr.K.M.Ramesh, Advocate SR.No.2066

+1cc to Mr.S.R.Sundaram, Advocate SR.No.1859

+1cc to Mr.K.M.Ramesh, Advocate SR.No.2066 (11/03/2019)

+1cc to Mr.K.M.Ramesh, Advocate SR.No.2066 (12/03/2019)

W.P.Nos.22604 to 22606 of 2012

VBA(CO)
GMY(15/02/2019)