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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 08.03.2022

DELIEVERD ON: 02.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.19426 of 2016 and 12007 of 2017

and

W.M.P.(MD).Nos.14004 and 14005 of 2017

W.P.(MD)No.19426 of 2016

M.Basheer Ahamed ... Petitioner

vs

1.The General Manager,
Southern Railway,
Park Town,
Chennai - 600 003.

2.The Financial Adviser and Chief Account Officer,
Southern Railway,
Park Town,
Chennai - 600 003.

3.The Chief Personnel Officer,
Southern Railway,
Park Town,
Chennai - 600 003.

4.The Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
6th Floor, MMC Building,
Park Town,
Chennai - 600 003.

5.The Divisional Security Commissioner,
Railway Protection Force,
Southern Railway,
Madurai Division,
Madurai - 625 016.

6.The Divisional Personnel Officer,
Southern Railway,
Madurai Division,
Madurai - 625 016.

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7.The Senior Divisional Financial Manager,
O/o Divisional Railway Manager,
Southern Railway,
Madurai Division,
Madurai - 625 016.

8.The Branch Manager,
Indian Overseas Bank,
Kodimangalam Branch,
Madurai.

9.The Chief Regional Manager,
Regional Office,
Indian Overseas Bank,
80 Feet Road,
Anna Nagar,
Madurai - 20. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order No.A6/Pen/IOB dated 18.09.2014 issued by the second respondent and quash the same as arbitrary, illegal and against the dictum laid down by our Hon'ble Supreme Court of India and our Hon'ble High Court and consequently direct the respondents 2, 8 and 9 to refund pension arrear amount of Rs.17,654/- that has already been recovered from the petitioner's VII Pay Commission Pension Arrear amount by the eighth respondent's impugned order mentioned above.

For Petitioner : M/s.J.Anandhavalli

For R-1 to R-7 : Mr.S.Manohar

For R-8 and R-9 : No appearance

W.P.(MD)No.12007 of 2017

M.Basheer Ahamed ... Petitioner

vs

1.The General Manager,
Southern Railway,
Park Town,
Chennai - 600 003.

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2.The Financial Adviser and Chief Account Officer,
Southern Railway,
Park Town,
Chennai - 600 003.

3.The Senior Divisional Financial Manager,
Southern Railway,
Madurai Division, DRM Complex,
Madurai - 625 016.

4.The Chief Personnel Officer,
Southern Railway,
Park Town,
Chennai - 600 003.

5.The Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Park Town,
Chennai - 600 003.

6.The Divisional Security Commissioner,
Railway Protection Force,
Southern Railway,
Madurai Division,
Madurai - 625 016.

7.The Divisional Personnel Officer,
Southern Railway,
Madurai Division,
Madurai - 625 016. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order No.UXP/535/Misc. dated 11.08.2016 issued by the sixth respondent herein, Divisional Security Commissioner, Railway Protection Force and quash the same as arbitrary, illegal and against the Rules of Railway Protection Force 1987 and Railway Board circulars and to consequently direct the respondents to sanction First Financial Up gradation under Assured Career Progressive scheme in the cadre of Assistant Sub-Inspector of Railway Protection Force in the scale Rs.4000-6000 and to rectify omissions and irregularities in the calculation of petitioner's pension amount of Rs.7880 + relief and to sanction correct and eligible initial pension amount of Rs.13550 + relief from the date of retirement and to pay him the attended benefits including arrears from eligible date.

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For Petitioner : M/s.J.Anandhavalli

For R-1 to R-7 : Mr.S.Manohar
for Mr.C.Vakeeswaran

For R8 & R9 : No appearance

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COMMON O R D E R

The Writ Petition in W.P.(MD).No.19426 of 2016 has been filed for Writ of Certiorarified Mandamus to quash the impugned order dated 18.09.2014, wherein the second respondent had directed the Indian Overseas Bank to recover over payment of Rs.2,06,534/- and with a consequential prayer to refund the pension arrear amount of Rs.17,654/- and it has already been recovered from the petitioner's VII Pay Commission Pension Arrear amount by the eighth respondent.

2. The Writ Petition in W.P.(MD).No.12007 of 2017 has been filed to quash the impugned order dated 11.08.2016 issued by the sixth respondent and consequently direct the respondents to sanction the first financial upgradation under Assured Career Progressive scheme in the cadre of Assistant Sub-Inspector of Railway Protection Force in the scale Rs.4000-6000 and to rectify omissions and irregularities in the calculation of petitioner's pension amount of Rs.7880 + relief and to sanction correct and eligible initial pension amount of Rs.13550 + relief from the date of retirement and to pay him the attended benefits including arrears from eligible date.

3. The brief facts as stated in the Writ Petition in W.P.(MD).No.12007 of 2017 is the petitioner is 65 years old at the time of filing of the Writ Petition and retired as Head Constable on 31.05.2012 after completing 37 years of service in Railway Protection Force. The contention of the petitioner is after retirement when he was waiting for pension amount, the sixth respondent advised the petitioner vide Pension Payment Advice dated 01.06.2012 that a sum of Rs.7,880+DA has been sanctioned in the pension amount. The contention of the petitioner is that his batchmates who joined in Railway Protection Force has retired along with the petitioner are getting more pension. Even the junior Constables are getting more pension than the petitioner. For instance, one Sri.Kottaimani S/o.Subbiah, Seniority No.497 retired on 31.01.2011 and one Hari Palaninathan S/o.Ponnurangan, Seniority No.507 retired as Head Constable on 31.06.2012 and one Rajagopal S/o.Muthukrishnan, Seniority No.400 retired as Head Constable on 31.05.2013. All the above are juniors to the petitioner and are getting more pension. The service particulars as given by the petitioner is as under:

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i) Date of birth ... 01.06.1952

ii) Date of initial appointment in Railway Protection Force... 04.01.1975

iii) Initial designation ... Rakshak/Constable

iv) Training period ... 04.01.1975 - 30.08.1975

v) Date of absorption in Railway Protection Force after training ... 03.09.1975

vi) P.F.No ... 01087186

vii) Designation at the time of retirement & Office... Head Constable at DSC/ 0 / MDU

viii) Retired on Superannuation ... 31.05.2012

ix) Total qualifying service ... 36.5 years

x) Last pay +GP at the time of retirement given to me ... Rs.11560+4200 in PB 9300-34800

xi) Pension sanctioned to me... Rs.7880+DA (P.M)

xii) P.P.O. Number ... 0608215719

4. Immediately, after the receipt of Pension Payment Advice dated 01.06.2012, the petitioner met the third and sixth respondents in person and represented that he has been sanctioned only a meager amount of pension and they promised to take appropriate action to rectify the wrong calculations. The petitioner collected relevant documents under RTI Act, wherein, the petitioner claims that the petitioner's pension has been wrongly calculated without taking into consideration the initial training period and the correct due date from the grant of increments and financial upgradation under Assured Career Progressive Scheme and Modified Career Progressive Scheme. Based on the petitioner's oral representation made to the third and the sixth respondents in February 2013 itself, the pension amount was increased from Rs.7,880/- + DA to Rs.13,550/- + DA and in view of the increased pension, the petitioner was receiving Rs.13,550/- + DA as pension amount from February 2013 to August 2014. However, in September 2014, again the petitioner pension was reduced to Rs.7,880/- without any reasons. The petitioner preferred Writ Petition in W.P.No.19426 of 2016 and this Court has granted interim injunction. The petitioner obtained the copies of the documents of the seniority

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list of Constables and Head Constables and the service records. Later it came to the knowledge of the petitioner that his two service registers were being maintained and the particulars contained in two service registers were quite contrary to each other. The contention of the petitioner is that from the Service Registers and Seniority lists obtained under RTI, the petitioner was not granted annual increments from the first date of January of every year till his retirement. He was granted annual increment on the date of absorption into the post of Rakshak and in the year 1999, the petitioner was granted financial upgradation and fixation of pay only in the cadre of Assistant Sub Inspector of Railway Protection Force in the scale of 4000-6000 instead of pay fixation and increment in the cadre of Sub-Inspector of Railway Protection Force in the scale of Rs.5500-9000 under Vth Pay Commission and in the year 2008, the petitioner was granted FUG in the cadre of Inspector of Railway Protection Force in the scale of Rs.15600-39100 + GP under 6th Pay Commission. According to the petitioner, as per Rule 63.1 of Railway Protection Force Rules, 1987 and Railway Board circular dated 16.07.2015, the initial training period should be taken for the purpose of calculation of pension amount but the respondents have not taken the initial training period. The said period also taken into account for the purpose of grant of increments. In the year 1991, the petitioner was officiated as Naik and such post of Naik is not a promotion and on 04.12.1997, the Naik and Head Constable grades were merged without any monetary benefits. The respondents have denied the first financial upgradation under Assured Career Proceedings Scheme in the cadre of Assistant Sub Inspector of Railway Protection Force in the scale of Rs.4000-6000 which is against the 5th Pay Commission. The second financial upgradation in the year 1997 was not granted under Assured Career Progressive Scheme in the cadre of Assistant Sub-Inspector of Railway Protection Force in the scale of RS.4000-6000 instead of financial upgradation in the cadre of Sub-Inspector in the scale of Rs.5500-9100. The petitioner has granted third financial upgradation in the year 2008 under Modified Assured Career Progressive Scheme in the cadre of Sub-Inspector in the scale of Rs.9300-34900 + GP 5400 instead of upgradation in the cadre of Inspector of Railway Protection Force in the scale of Rs.15600-19100 + GP. The petitioner's juniors are getting more pay increments after their retirement. Increments have not been granted on the date of petitioners appointment and there are two service registers which are contrary to each other. Therefore, the petitioner submits that the reply is totally illegal and against the rules of the respondents.

5. The respondents have filed a counter stating that the petitioner was retired as Head Constable in the Railway Protection Force and he was enlisted in RPF on 04.01.1975. After completion of nine months training, he was appointed as Rakshak with effect from

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03.09.1975. On perusal of the service records, it was found that the increment dues were allowed to the petitioner from time to time as per the extant rules without any omission or delay. In respect of adding the training period for increment purpose came into force from the year 1986, but the petitioner was appointed in the year 1975. As per V pay Commission, the petitioner was granted 2nd Assured Career Progressive with effect from 2004 as applicable to all staffs who were eligible. As per the VI Pay Commission, the petitioner was granted 3rd financial upgradation under Modified Assured Career Progressive Scheme with effect from 01.09.2008 and also pay was revised to Rs.10210+4200 in the pay band of Rs.9300-34800. Under the Railway board circulars on V and VI Pay Commission implementation, it has been clearly stated that the training period will not be considered for granting promotion/financial upgradation under Assured Career Progressive and Modified Assured Career Progressive Scheme. The petitioners pay in the retirement month that is on 31.05.2012, he was paid Rs.11560+4200/- with allowances which are eligible. Before retirements itself, the petitioner very well aware about the eligible increments, promotions, ACPs and MACP and he has not raised any doubts and queries or submitted any representations. As per Railway employees pension rules 1993, the pension amount will be fixed as 50% of Basic Pay (Pay + GP) of what the employee is getting in the month of superannuation. Hence the petitioner pension amount was derived from the last drawn salary that is Rs.11560+4200 and fixed as Rs.7880 + eligible allowances at the time of retirement. In terms of Railway Board Letter dated 15.09.2008, the petitioner pay was stepped up on par with his junior Head Constable namely, Sengaian. Finally, his pay was revised to Rs.12,010 + GP Rs.4,200 with effect from 01.07.2011 and the arrears amount of Rs.44,415/- for the period from 01.07.2004 to 31.05.2012 was paid. Accordingly, his pension was revised to Rs.8105 + Relief with effect from 01.06.2012. The petitioner has referred to retired staffs namely, Kottaimani, Hari Palaninathan and Rajagopal who had retired in the year 2012 and 2013. The contention of the respondents is that they might have earned increments and therefore the petitioner cannot compare with the said persons. The respondents denied the allegations that the respondents have issued any modification or revision order from February 2013. The pension was increased as per the Rule from Rs.8105/- to Rs.13550/-. During the internal check of Debit scroll pertaining to Kodimangalam (Madurai link) Branch for the month of August 2014, it was noticed that an excess amount of Rs.5674+80% relief as admissible from time to time was being made from the month of February 2013. The same was intimated to the Bank authorities and advised to recover the overpayment to the tune of Rs.2,06,534/- in respect of the retired employee vide letter 18.09.2014. This overpayment has already been intimated to the petitioner by the Bank employees. As far as two service registers allegations are concerned, the contention of the respondents is that once the completion of first service register, the second one can be added and for adding, it is not necessary to

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obtain the Date of Birth from the petitioner's own hand writing or attestation from the authorized officers. The petitioner was allowed to annual increments wherever he was eligible as per Railway extant rules. The petitioner was promoted as Naik on 01.06.1991 after pre promotional training. The Assured Career Progressive Scheme came into force in the year 1999 and those who had not got any promotion from their initial appointment are eligible for two promotions. But in the present case, the petitioner got the Naik promotion in the year 1991, hence he was granted II ACP promotion as Head Constable in the year 1999. Further he was granted III financial upgradation (III MACP) with effect from 01.09.2008. All his promotions and financial benefits were given from time to time and his pay was fixed properly. The inclusion of training period for the purpose of granting annual increments came into force from the year 1986 for the staffs who were appointed prior to that date were given pay rise with two increments and the petitioner was also granted. Only initial training period before his initial appointment would be taken for increment purpose but the training period of pre-promotional training will not be taken for the purpose of increments. In the 4th Pay Commission, the starting pay for the Constable was fixed as Rs.855/- with two additional increments in the rate of Rs.15 in the scale of Rs.825-1200/- in the year 1986. Based on this, the petitioner pay was fixed as Rs.920/- in the scale of Rs.825-1200/- which was granted to all his batchmates including the petitioner and there were no discrepancies. In the 4th Pay Commission, the petitioner pay was fixed at Rs.3575/- in the scale of Rs.3050-4590/- as per recommendations. As per 5th Pay Commission, staffs who were not granted even single promotion were eligible for 1st and 2nd ACP. In the present case, the petitioner was granted first promotion as Naik in the year 1991, hence he was granted II ACP in the year 1999. As per VI Pay Commission, the staffs who were not granted even a single promotion were eligible for I, II and III MACP respectively on completion of 10 years, 20 years and 30 years of service. In the present case, the petitioner was granted first promotion in the year 1991 and second promotion through ACP in the year 1999 and hence on completion of thirty years of service, he was eligible for III financial upgradation in the year 2008 and the petitioner was granted 3rd financial upgradation in the year 2008. As per 5th Pay Commission which came into force on 1999, the petitioner was eligible for II ACP with effect from 1999 since the petitioner already enjoyed his promotion in the year 1991. The petitioner was allowed the notional increment of Rs.100 in the year of Vth Pay Commission implementation that is 1999 and the pay fixation was done as per rule. Since there are no mistakes or irregularities and not omission in fixation of pay during the petitioner's service period and the claim of the petitioner is illegal. Therefore, the respondents prayed to dismiss the Writ Petition.

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6. Heard M/s.J.Anandhavalli, learned counsel for the petitioner and Mr.S.Manohar and Mr.C.Vakeeswaran, learned counsel for respondents 1 to 7.

7. The contention of the petitioner is that the petitioner is working in the Railway Protection Force. Instead of the authorities under the Railway Protection Force, the Bank Chief Manager of IOB has issued the impugned order, wherein, it has been stated that during the internal check of Debit scroll pertaining to Kodimangalam (Madurai link) Branch for the month of August 2014, it was noticed that an excess amount of Rs.5674+80% relief as admissible from time to time was being made from the month of February 2013 to the petitioner, thereby Rs.2,06,534/- has been arrived as overpayment and the same has to be reconciled and remitted to the office in one lumpsum by way of demand draft. However, the contention of the Bank is that the employer / respondent has already intimated to the Bank vide letter dated 18.09.2014. Therefore, the consequential letter was immediately given to the petitioner through Bank. The contention of the employer / Railway authorities is that correct re-fixation order was issued to the petitioner and the petitioner has already submitted his objections and that was considered vide letter dated 11.08.2016 and there is no infirmity. Therefore, this Court is of the considered opinion that the plea of the petitioner that without giving any opportunity to the petitioner, the same has been deducted is incorrect and the said plea is rejected.

8. The next contention raised by the petitioner is that the petitioner was not granted increments. The respondents submitted that if the employee was not granted any promotion, then the employee is entitled to increment. In the present case, the petitioner was already granted promotion to the post of Naik and hence the petitioner is not entitled to increments. The contention of the petitioner is that the post of Naik is not a promotional post. On perusal of the service rules, it is seen that the Naik post is the promotional post. Therefore this Court is of the considered opinion that once promotion is granted to the petitioner as Naik, then the petitioner is not entitled to increments. Since promotion of Naik post was granted, hence the 1st ACP was not granted to the petitioner.

9. It is seen that the scheme of upgradation was introduced in the year 1999 along with Assured Career Progressive Scheme. In the entire service of the Railway Protection Force, the person is eligible for ACP for 10 years-20 years- 30 years, if there is no promotion. After Naik promotion, the petitioner was not granted any promotion. Hence, the petitioner is entitled to promotion or increments. Hence, the II ACP was conferred on the petitioner after completion of twenty years of service. The III ACP

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was conferred on the petitioner after completion of 30 years of service. In the present case, since the petitioner is conferred with Naik post in the year 1991 it was considered as I ACP/promotion. Thereafter, since the petitioner was not conferred with promotion, he was conferred with II ACP with effect from 1999, III ACP with effect from 01.09.2008 and based on that, the monetary benefits were also conferred. The contention of the petitioner is that the 1st ACP ought to be granted in the year 1999 was refuted by the respondents stating that the scheme of ACP was introduced in the year 1999 and retrospective effect of the scheme cannot be granted. This Court is of the considered opinion that any scheme especially whenever any monetary benefits are conferred, then only prospective effect can be granted and hence the plea of the petitioner is that 1st ACP benefits ought to be granted for the earlier period i.e. prior to 1999 cannot be entertained. The plea of the petitioner is rejected.

10. Therefore, this Court is of the considered opinion that there is no infirmity in the fixation of pay and the pensionary benefits. As far as the recovery proceeding is concerned, the contention of the petitioner is that recovery cannot be made from the retired person. The petitioner had retired on 31.05.2012 and the wrong fixation was for the period from 01.02.2013 to 31.08.2014, which is evident from the impugned order dated 18.09.2014. Therefore this Court is of the considered view that the wrong fixation is only mistake committed recently that too within five years after retirement and the respondents are right in recovering the amount. More so, this Court has held supra the petitioner is not eligible for such benefits. Hence, this Court is of the considered opinion that the recovery can be made from the petitioner. As far as the future amount, the respondents shall fix the correct eligibility and then the corrected amount shall be paid. Both the writ petitions lack any merits.

11. Hence the Writ Petitions are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-II)

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Sub Assistant Registrar(CS)

Nsr

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Note:
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The General Manager,
Southern Railway,
Park Town, Chennai - 600 003.

2.The Financial Adviser and Chief Account Officer,
Southern Railway, Park Town, Chennai - 600 003.

3.The Chief Personnel Officer,
Southern Railway, Park Town,Chennai - 600 003.

4.The Chief Security Commissioner,
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5.The Divisional Security Commissioner,
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80 Feet Road,
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Madurai - 20.

+2 CC to M/s.S.MANOHAR, Advocate (SR-24300 & 24301[F] dated 06/06/2022)

+2 CC to M/s.J. ANANDHAVALLI, Advocate (SR-24317 & 24318[F] dated 06/06/2022)
+1 CC to M/s.C.VAKEESWARAN, Advocate (SR-24317 & 24318[F] dated 06/06/2022)

Order made in
W.P.(MD)Nos.19426 of 2016 and 12007 of 2017
02.06.2022

SP(CO)
TR(09.06.2022) 12P 15C

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