



WP No.42194 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

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1.Union of India,
Represented by the General Manager,
Southern Railway,
Park Town, Chennai.

2.The Divisional Railway Manager,
Salem Division,
Southern Railway, Salem.

3.The Divisional Railway Manager,
Palghat Division,
Southern Railway, Palghat.

4.The Divisional Personnel Officer,
Salem Division,
Southern Railway, Salem.

... Petitioners

vs

1.P.Yoghanadan
2.The Registrar,
Central Administrative Tribunal,
Chennai.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari, to call for the records on the file of the second respondent in OA No.1177/2012 dated 16.02.2016 and quash the same.

For the Petitioners :Mr.P.T.Ramkumar

For the Respondents :Mr.N.R.Jasmine Padma
for Mr.L.Chandrakumar
for first respondent
Second respondent -Tribunal

ORDER

(Order of the Court was made by *D.KRISHNAKUMAR, J.*)

The writ petitioner department challenges the order of the Tribunal in OA No.1177 of 2012 dated 16.02.2016.

2. Brief facts of the case:

2.1. The first respondent was appointed in Palghat Division of Southern Railways as Commercial Clerk on compassionate grounds on 11.04.1983. Thereafter, he joined duty on 04.02.1984. Further he was promoted as Senior Commercial Clerk. While working as Senior



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Commercial Clerk, the first respondent applied for the post of Goods Guard and he was selected and posted as Goods Guard. Thereafter, he was promoted as Senior Goods Guard. As the promotion from Goods Guard to Senior Goods Guard is a non-functional promotion, the pay of the first respondent as Senior Goods Guard was fixed under Rule 1313(1)(a)(2) of Indian Railway Establishment Code. Thereafter, he was promoted as Passenger Guard. As this was the functional promotion, the first respondent was granted one promotional increment with effect from 16.08.2006. Thus the pay of the first respondent was fixed at Rs.6650/- w.e.f.16.08.2006 and at Rs.6950/- w.e.f. 01.10.2006 as per the option under Rules 1313 and at Rs.7100/- w.e.f. 01.10.2007.

2.2. While so, the Government of India has announced the acceptance of the recommendations of the VI Pay Commission and implemented the same from 01.01.2008 by notification dated 04.09.2008. Consequent to the implementation of the VI Pay Commission, the Railway Department vide Memorandum dated 08.05.2009, fixed the pay of the employees in the revised pay structure. The pay of the first-respondent was not re-fixed on the



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ground that in the cases of promotion in same grade of pay, the promotion increment would not be admissible. Aggrieved by the same, the first respondent has made a representation dated 24.12.2009 to the Railway Board seeking re-fixation of his pay on par with his colleague one C. Sureshkumar, Pass Guard in his parent department. The said representation was rejected by the Respondent Board by letter dated 13/30.08.2012 stating as follows: *As per the Railway Services (Revised Pay) Rules -2008 issued by Railway Board under Notification No.PC-VI/2008/I/RSRP/1 (RBE No.103/2008) dated 04.09.2008, the pay band and grade pay of the post of Senior Goods Guard and Passenger Guard are one and the same in New Pay Structure w.e.f.1.1.2006 i.e PB-2 Rs.9300-34800 and G.Pay Rs.4200. As per the above said rule, the category of Sr.Goods Guard in pre-revised scale Rs.5000-8000 has been placed in New Pay structure in pay band R.9300-34800 with Grade Pay Rs.4200. The categories of Passenger Guard in Pre-revised Scale Rs.5000-8000 and Sr. Passenger Guard in pre-revised scale Rs.5500-9000 have also been placed in New Pay Structure in pay band Rs.9300-34800 with Grade Pay Rs.4200/- and have been merged. Rule 13 & 15 of Railway Services (Revised Pay) Rules*



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2008, permit fixation of pay by granting promotional increment only in case of promotion from one grade pay to another in the New Pay Structure. It is obvious from the above that in case of promotion in same grade pay, promotional increment would not be admissible. This has also been reiterated by the Railway Board letter No. CPO/MAS letter No.P(S)529/II/Guards Policy dated 31.12.2009. Hence, the fixation of pay done in your favour w.e.f.1.1.2006 in New Pay Structure and subsequent fixation of pay made/increments granted till 01.07.2012 is in order.”

2.3. Challenging the said letter dated 13/30.08.2012, the first respondent had filed an original application in OA No.1177 of 2012. The Tribunal, by order dated 16.02.2016, had disposed of the said OA holding as follows: *The answer is clear that it has become a fait accompli even before the implementation of the 6th Pay Commission. The applicant got promoted from Senior Goods Guard to Passenger Guard and at that time the stipulation as contained in the notification dated 04.09.2008 was not in vogue. As such trying to deprive the applicant of his benefit which he*



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already got under the pre-revised scale cannot be countenanced and the respondent authority is expected to adhere to the office memorandum dated 16.10.2015. Accordingly, this OA is disposed of.” Aggrieved by the said order dated 16.02.2016 passed by the Tribunal, the Petitioner Department have filed the present writ petition.

3. Learned Standing Counsel appearing for the petitioner Department submits that the said direction of the Tribunal is contrary to the Railway Services (Revised pay) Rules 2008, as the post of Senior Goods Guard has been merged with Passenger Guard and accordingly, the scale of pay has rightly been fixed in accordance with the said Rules and therefore, the said order of the Tribunal is liable to be set aside.

4. Learned counsel appearing for the first respondent strongly relied upon the representation dated 20.06.2012, sent by the first respondent to the petitioner Department, wherein he has made a specific claim that the increment already availed by him cannot be denied since the nature of work as Passenger Guard is not similar to the nature of work as Senior Goods



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Guard and therefore, the increment already he has availed prior to the merger has to be taken into account while fixing his pay scale as per the revised structure with effect from 16.08.2006 instead of 01.07.2007. Therefore, the Tribunal has rightly considered the Office Memorandum dated 16.10.2015. In the light of the aforesaid memorandum, the petitioner Department cannot reduce the scale of pay which he has already availed prior to the merger. Therefore, the order of the Tribunal is perfectly valid. Hence, he seeks for dismissal of the writ petition.

5. Heard the counsel for the parties and perused the materials available on record.

6. The specific contention made on behalf of the petitioner Department is that the first respondent herein has not opted to switch over to the revised pay structure from the date of his promotion/upgradation etc. Therefore, he cannot claim the benefit of earlier promotion under the pay fixation from the date of pay of revised pay pension. The representation made by the first respondent was considered by the petitioner Department and the same was



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rejected on the ground that fixation of pay was done in his favour with effect from 01.01.2006 in a new pay structure and subsequent fixation of pay made/increment granted till 01.07.2012, is in order. It is the further case of the petitioner Department that as per Rule 13 and 15 of Railway Services (Revised pay) Rules, 2008, permit fixation of pay by granting promotional increment only in case of promotion from one grade pay to another in the new pay structure. In the present case, as the promotion was in the same grade pay, granting promotional increment would not be admissible. However, according to the first respondent, based on the VI Pay Commission, his basic pay ought to have been fixed at Rs.16,650 + 4200, whereas his basic pay was fixed at Rs.16040 + 4200, i.e less one increment. The first respondent has relied upon paragraph 6 of the Office Memorandum issued by the Petitioner Railway Board in No.F-2-1/2015-E.III(A) dated 16.10.2015, wherein it is stated that *'in cases of promotion took place in the pre-revised pay structure during the period between 01.01.2006 and the date of notification of CCS(RP) Rules 2008 when the pre-revised and revised pay scaled were different and the posts carried the character of feeder and promotional grades pay fixation on such*



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promotion shall be allowed under Rule 13 of the CCS(RP) Rules, 2008 subject to the following conditions.....' According to the Tribunal, the first respondent is entitled for the benefit as per the aforesaid Office Memorandum dated 16.10.2015.

7. In view of the above discussions and the reasons stated by the Tribunal, we are not inclined to interfere with the order of the Tribunal as there is no merits in the writ petition. Hence, the writ petition is liable to be dismissed.

8. In view of the above, the writ petitions stands dismissed. The petitioner department is directed to re-fix the pay on promotion with effect from 16.08.2006 with all consequential benefits, within a period of 12 weeks from the date of receipt of a copy of this order. There will be no order as to costs. Consequently, WMP No.36097 of 2016 is closed.

[D.K.K., J.] [P.D.B., J.]
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Neutral Citation : Yes/No
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and
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