



W.P.Nos.27049 of 2022 & 7439 to 7441 of 2017
and W.M.P.Nos.26268 of 2022 & 8090 to 8094 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.01.2023

DELIVERED ON : 24.01.2023

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.Nos.27049 of 2022 & 7439 to 7441 of 2017
and

W.M.P.Nos.26268 of 2022 & 8090 to 8094 of 2017

W.P.No.27049 of 2022 :

Dr.S.Sivalingam

...Petitioner

Vs.

1.Union of India,
Rep. by Chairman & CEO,
Railway Board, Rail Bhavan,
Ministry of Railways, Raisina Road,
New Delhi - 110 001.

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

3.Principal Chief Personnel Officer,
O/o.General Manager,
Southern Railway, Chennai - 3.



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4.Chief Personnel Officer/Gazetted,
O/o.General Manager,
Southern Railway,
Chennai - 3.

5.Deputy Chief Commercial Manager/Claims,
Claims Office, MMC IV Floor,
Southern Railway, Park Town,
Chennai - 3.

6.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai.

... Respondents

W.P.No.7439 of 2017 :

1.Union of India,
Rep. by Chairman & CEO,
Railway Board, Rail Bhavan,
Ministry of Railways, Raisina Road,
New Delhi - 110 001.

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

3.The Chief Claims Officer,
Southern Railway, MMC V Floor,
Chennai - 3.

4.The Deputy Chief Commercial Manager/Claims,
Claims Office, MMC V Floor,
Southern Railway, Park Town,
Chennai - 3.



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5.Ajeeth Saxena,
Chief Claims Officer,
Commerical Head Quarters Office,
MMC V Floor,
Southern Railway, Park Town,
Chennai - 3.

6.P.Vallinayagi,
Deputy Chief Commercial Manager/Claims,
Service through CCO,
Moore Market Complex, 5th Floor,
Southern Railway, Chennai - 3.

7.A.Sundar,
Inquiry Officer,
The Deputy Chief Commercial Manager/PRS,
2nd Floor, Moore Market Complex,
CCM/PRS/Office,
Southern Railway, Chennai - 3.

8.Sathyanarayana Hari,
DCM/MAS & IO,
Divisional Railway Manager Office,
NGO Annexure Building,
1st Floor, Southern Railway,
Chennai Division,
Park Town, Chennai - 3.

9.Prabhu Premkumar,
ACM/Rates/MAS, CCM/O/MAS,
G.M.Office, Ground Floor,
Southern Railway,
Park Town, Chennai - 3.

...Petitioners

Vs.



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1. Dr. S. Sivalingam

2. The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai.

... Respondents

W.P.No.7440 of 2017 :

1. Union of India,
Rep. by Additional General Manager,
Southern Railway,
Park Town, Chennai - 3.

2. A. Sundar,
The Deputy Chief Commercial Manager/PRS &
Inquiry Officer,
2nd Floor, Moore Market Complex,
CCM/PRS/Office,
Southern Railway, Chennai - 3.

3. Sathyanarayana Hari,
DCM/MAS & IO & Inquiry Officer,
Divisional Railway Manager Office,
NGO Annexure Building,
2nd Floor, Southern Railway,
Chennai Division,
Park Town, Chennai - 3.

4. Prabhu Premkumar,
ACM/Rates/MAS & Inquiry Officer,
CCM/O/MAS,
G.M. Office, Ground Floor,
Southern Railway,
Park Town, Chennai - 3.



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5.The Deputy Chief Personnel Officer/T,M&E,
Headquarters office, Personnel Branch.

6.Chief Vigilance Inspector/Medical Department,
General Manager Office,
Vigilance Branch, Chennai - 3.

...Petitioners

Vs.

1.Dr.S.Sivalingam

2.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai.

... Respondents

W.P.No.7441 of 2017 :

1.Union of India,
Rep. by General Manager,
Southern Railway,
Park Town, Chennai - 3.

2.Chief Commercial Manager,
Southern Railway, GM Office,
Park Town, Chennai - 3.

3.A.Sundar,
The Deputy Chief Commercial Manager/PRS &
Inquiry Officer,
2nd Floor, Moore Market Complex,
CCM/PRS/Office,
Southern Railway, Chennai - 3.

...Petitioners

Vs.



W.P.Nos.27049 of 2022 & 7439 to 7441 of 2017
and W.M.P.Nos.26268 of 2022 & 8090 to 8094 of 2017

1. Dr. S. Sivalingam

2. The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai.

... Respondents

Prayer in W.P.No.27049 of 2022 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the Hon'ble Central Administrative Tribunal / 6th respondent passed in O.A.No.505 of 2022 dated 16.08.2022 and quash the same and consequently direct the 2nd respondent to consider the representation of the petitioner dated 13.05.2022 praying for the opening of the sealed cover and to grant him promotion to the post of Law Officer on par with his juniors with all consequential, monetary and other service benefits along with payment of all pending salary, conveyance and other allowances for certain sick and suspension periods as well as travel allowances.

Prayer in W.P.No.7439 of 2017 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the entire records of the first respondent in O.A.No.282 of 2015 and quash the order passed therein dated 17.10.2016.

Prayer in W.P.No.7440 of 2017 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the entire records of the first respondent in O.A.No.889 of 2016 and quash the order passed therein dated 17.10.2016.



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Prayer in W.P.No.7441 of 2017 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the entire records of the 2nd respondent in O.A.No.1342 of 2016 and quash the order passed therein dated 17.10.2016.

In W.P.No.27049 of 2022 :

For Petitioner : Mr.Kandhan Duraisamy, Sr. Counsel
Asst. by Ms.R.Moneshaa
For R1 to R5 : Mr.V.Chandrasekaran, SPC

In W.P.Nos.7439 to 7441 of 2017 :

For Petitioners : Mr.V.Radhakrishnan, Sr. Counsel
Asst. by Mr.P.T.Ramkumar, Sr. Counsel
For R1 : Mr.Kandhan Duraisamy, Sr. Counsel
Asst. by Mr.M.Gnanasekar

COMMON ORDER

(R.HEMALATHA, J.)

Writ Petition in W.P.No.27049 of 2022 is filed challenging the orders dated 16.08.2022 passed in O.A.No.505 of 2022 by the Central Administrative Tribunal, Chennai, and Writ Petitions in W.P. No.7439 to 7441 of 2017 are filed challenging the orders dated 17.10.2016 passed by



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WEB COPY the Central Administrative Tribunal, Chennai, in O.A.Nos.282 of 2015,
889 & 1342 of 2016.

2. Briefly the facts of the case are as follows :

- i. The petitioner in W.P. No.27049/2022 (herein after called petitioner) was appointed as a skilled Artisan trainee in the Chennai Division of Southern Railway in the year 1987. Subsequently, he was promoted to the post of Chief Law Assistant and continues in the same post till date.
- ii. In 2014, he was issued with three major charge memos dated 03.09.2014, 16.09.2014 & 21.11.2014 by the fifth respondent for certain alleged omissions and commissions during his service as Chief Law Assistant. Prior to this he was placed under suspension from 16.07.2014 to 16.09.2014 contemplating disciplinary proceedings to be initiated.
- iii. All these three charge memos were issued by one M/s.P.Vallinayagi, the erstwhile Deputy Chief Commercial Manager/Claims. Since he refused to receive the charge memo



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dated 21.11.2014 a minimum penalty advice dated 23.01.2015 of the fifth respondent was issued mentioning one increment cut for 35 months. It is also a fact that the petitioner applied for sick leave from 17.07.2014 to 24.09.2014 (i.e. during the suspension period) without informing the office and producing medical / fitness certificate at the time of joining. This penalty reportedly was after the petitioner failed to submit any explanation for the refusal to receive the charge memo dated 21.11.2014.

- iv. Aggrieved by the three charge memos and the penalty advice dated 23.01.2015, the petitioner approached Central Administrative Tribunal, Chennai in O.A.No.282/2015.
- v. However, during the pendency of O.A.No.282/2015, summons were issued to appear before the enquiry committee. The petitioner had also submitted a representation alleging bias which was also rejected vide order dated 12.05.2016. His main contention in O.A.No.282 of 2015 was that the authority who had issued the charge memos was not empowered to do so and infact was not the disciplinary authority as stipulated in the Railway Servants



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- vi. Since his letter alleging bias was rejected there was another OA No.889 of 2016 filed by him against this rejection order dated 12.05.2016. Subsequently, another representation dated 22.07.2016 alleging bias against the enquiry officer was also not considered by the respondent who instead directed him to appear in the enquiry proceedings by order dated 08.08.2016.
- vii. This order was also challenged by the petitioner in O.A.No.1342 of 2016 and an order of interim stay was also granted for the enquiry proceedings.

2.1. The Central Administrative Tribunal, Chennai, held that the disciplinary proceedings have been instituted against the petitioner by an official who is not competent to be the disciplinary authority as per the Railways Servants (Discipline & Appeal) Rules, 1968 and therefore, allowed O.A.Nos.282/2015 and 889/2016 while dismissing O.A.No.1342 of 2016 as 'unnecessary', by a common order dated 17.10.2016.



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2.2. The respondents had challenged these orders in W.P.Nos.7439/2017, 7440/2017 & 7441/2017. This Court in these writ petitions ordered status quo of the impugned orders of the Central Administrative Tribunal, Chennai in O.A.No.282/2015, 889/2016 & 1342/2016 on 07.04.2017.

2.3. In the meanwhile, there was a notification dated 17.03.2021 for promotion to the post of law officer in Group-B for which the petitioner was eligible and was allowed to take part in the written exam and viva voce and was also shortlisted amongst the eight candidates empanelled for promotion. However, his results were placed in sealed cover owing to the fact that the three charge memos were still pending with the respondents and that this Court is yet to dispose the three writ petitions filed by the respondents. His representation dated 24.06.2022 to open the sealed cover and release his promotion was not considered by the respondents, aggrieved over which the petitioner made an application in O.A.No.505/2022 with the Central Administrative Tribunal, Chennai. This O.A.No.505/2022 was dismissed as not maintainable. W.P.No.27049/2022 is filed challenging the impugned



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order dated 16.08.2022 in O.A.No.505/2022.

3. Heard Mr.Kandhan Duraisamy, learned Senior Counsel, assisted by Ms.R.Moneshaa, learned counsel appearing for the petitioner, Mr.V.Chandrasekaran, learned Senior Panel Counsel appearing for the respondents 1 to 5 in W.P. No.27049 of 2022 and Mr.V.Radhakrishnan, learned Senior Counsel, assisted by Mr.P.T.Ramkumar, learned senior Counsel appearing for the petitioners and Mr.Kandhan Duraisamy, learned Senior Counsel, assisted by Mr.M.Gnanasekar, learned counsel appearing for the 1st respondent in W.P.Nos.7439 to 7441 of 2017.

4. Mr.Kandhan Duraisamy, learned Senior Counsel assisted by Ms.R.Moneshaa, learned counsel for the petitioner in W.P. No.27049 of 2022 would contend that out of the panel of eight shortlisted candidates only the petitioner's promotion was kept in a sealed cover and the validity of the panel is likely to expire shortly and the petitioner is also nearing his superannuation. It was also his contention that though the respondents had sought for interim stay of three impugned orders in



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O.A.Nos.282/2015, 889/2016 & 1342/2016 this Court had ordered status quo which would only tantamount to the questioning the validity of the impugned orders and therefore, the petitioner cannot be made to wait endlessly for no fault of his. Therefore, according to him, there was gross denial of natural justice as the three charge memos became null and void since all of them were not issued by the competent authority and the respondents did not make any efforts to accept their mistake and instead filed writ petitions against the impugned order holding on to their contention that the authority who had issued the charge memos was the actual competent authority.

5. Per contra, Mr.V.Chandrasekaran, learned Senior Panel Counsel for the respondents in W.P. No.27049 of 2022 has argued that there was no infirmity in the appointment of disciplinary authority as observed by the Central Administrative Tribunal, Chennai in its common order dated 17.10.2016. It was also contended by him that despite receiving the charge memos the petitioner had not cooperated with the enquiry officer and even during his suspension period he wanted it to be



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treated as sick leave by producing medical / fitness certificate. The contention of the petitioner in the Central Administrative Tribunal, Chennai earlier in O.A.No.282/2015 was that he was drawing a grade pay of Rs.4,800/- and as per the Railways Servants (Discipline & Appeal) Rules, 1968 only senior administrative officer with grade pay of Rs.10,000/- and above can be the disciplinary authority and therefore, the official who had issued charge memos was not competent to be the disciplinary authority. According to the counsel, this contention of the petitioner itself was wrong since his grade pay of Rs.4,800/- was only on his Modified Assured Career Progression (MACP) status and therefore, this financial upgradation cannot be considered while appointing the disciplinary authority. Moreover, his contention is that when the matter is pending in this Court, that too in the Division Bench, the petitioner ought not to have approached the Central Administrative Tribunal, Chennai, for any relief whatsoever. Therefore, the present petition in W.P.No.27049 of 2022 has no merits, is the contention of the respondents.



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6. The major points for consideration in all the four writ petitions put together are,

- i. Whether the authority who issued the three charge memos was competent to issue the same?
- ii. Whether the Central Administrative Tribunal, Chennai, by its common orders dated 17.10.2016 was right in allowing O.A.Nos.282/2015 & 889/2016 ?
- iii. Whether the Central Administrative Tribunal, Chennai, was right in dismissing O.A.No.505/2022 vide its orders dated 16.08.2022?

7. These three points of consideration rests basically on the three charge memos issued to the present petitioner by Tmt.P.Vallinayagi, Deputy Chief Commercial Manager/Claims, who is the fifth respondent in W.P.No.27049 of 2022. The contention of the petitioner is that the said P.Vallinayagi had committed an error by issuing the charge memo when she was not the competent authority. According to the office order bearing No.682/2014 dated 24.10.2014, her post as the Presenting officer, Railways Claims Tribunal, Chennai and her duty



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in Junior Administration Grade on adhoc basis was withdrawn with effect from 24.10.2014 and therefore, she ceased to be the Deputy Chief Commercial Manager/Claims after 24.10.2014. During the course of arguments it was admitted by the learned counsel for the petitioner that the first and second charge memos were issued prior to 24.10.2014 and therefore, valid as she was Deputy Chief Commercial Manager/Claims, Head Office, during that period. A bare perusal of the office order dated 24.10.2014 would show that her name does not find a place in the order thereby raising doubt on this very contention. It is also incomprehensible as to how the Central Administrative Tribunal, Chennai, in O.A.No.282/2015 had held that she was incompetent to issue the three charge memos. It is also pertinent to refer to the letter No.P(A) 86/2014/599 dated 16.11.2016, the relevant abstract of which is reproduced here :

"In the orders of the Hon'ble Central Administrative Tribunal, Madras Bench, the Court has observed that "the Applicant concerned is admittedly drawing the Grade pay Rs.4,800 and the Charge Sheet issued by the Officer is not a competent person as per the Railway Servants (Discipline & Appeal)



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Rules, 1968". In this connection, it is submitted that the Applicant is drawing Grade Pay attention is invited to this Office letter No.P(R)227/P/Vol.III dated 17.04.2013 (copy enclosed), wherein, clarification has been issued with regard to the MACP status with reference to the definition of Appointing Authority under D&A Rules which clearly indicates that the Appointing Authority should be with reference to the substantiate status alone, and not to the financial upgradation for the purpose of determining the Appointing Authority."

Therefore, it is clear that any financial upgradation due to MACP status will not decide the status of the Appointing Authority. It is also relevant to go into MACP scheme for Railway employees as circulated in circular dated 10.06.2019.

"The Scheme would be known as MODIFIED ASSURED CARRIER PROGRESSION SCHEME (MACPS) FOR RAILWAY EMPLOYEES. This Scheme is in suppression of previous ACP scheme and clarifications issued under and shall be applicable to all regularly appointed group 'A', 'B' and 'C' Railway Employees except officers of the organised group 'A' service. The status of group 'D' employees would cease on their completion of prescribed training, as recommended by the Sixth Central Pay Commission and would



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Therefore, it is clear that it was the petitioner who had twisted the facts by claiming himself to be an officer drawing grade pay of Rs.4,800/- which directly impacts the appointment of the disciplinary authority. The learned counsel for the petitioner also relied on the Apex Court decision in SLP (Civil) Appeal No.2537 of 2013 in *Union of India Vs. Anil Kumar Sarkar* dated 15.03.2013 in which it was held that when an employee is neither under suspension nor any charge sheet issued, the recommendation of DPC has to be honoured and there is no question of applying sealed cover procedure. This decision cannot be applied to the instant case as the three writ petitions filed by the respondents were pending for disposal till date. Therefore, We do not see any infirmity in the order of the Central Administrative Tribunal, Chennai, in O.A.No.505/2022 which was dismissed as not maintainable.

8. Now coming to the O.A.Nos.282/2015, 889/2016 &



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1342/2016 which were disposed of by a common order dated 17.10.2016,

we find the common order totally erroneous and perverse. The Central Administrative Tribunal, Chennai, in order to give a relief to the petitioner had not gone in detail into the various aspects of the case. No attempt was also made by the Central Administrative Tribunal, Chennai, to find out how the respondents could have done such a 'blunder' of issuing charge memos through an official who is not the competent authority. The petitioner who had claimed in O.A.No.282/2015 that Tmt.P.Vallinayagi was not the competent authority to issue charge memos to him, subsequently, had taken a different stand in the present W.P.No.27049 of 2022 that she was the competent authority to issue the first two charge memos issued before 24.10.2014 and only the third charge memo could not be issued by her due to internal arrangements of assignments by the official respondents. This tacit admission that two of the three charge memos were indeed issued by the competent official in itself invalidates his claim for opening of the sealed cover and release of his promotion. The adamant and recalcitrant attitude on his part by not attending to the enquiry before the committee appointed to go into the



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truth or otherwise of the allegations in itself is a misconduct and the respondents could have concluded the enquiry process *ex parte* which they did not do. This leniency shown by the official respondents clearly shows that there was no bias against the petitioner in any manner. There was also no attempt on the part of the petitioner to expedite the writ petitions which are pending right from the year 2017 when he had all the time to keep submitting representations finding fault with the system. The petitioner being a Government servant ought to have acted in a more responsible manner and presented to the adjudicating authorities by way of putting up proper facts instead of twisting the facts to suit his convenience. Therefore, we do not see any merits in W.P.No.27049 of 2022 and on the other hand, the W.P.Nos.7439 to 7441 of 2017 are liable to be allowed. The officials are directed to fast track the disciplinary proceedings and bring it to a logical conclusion.

9. In the result,

- i. W.P.No.27049 of 2022 is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The order dated



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Chennai, in O.A.No.505 of 2022 is upheld.

- ii. W.P.Nos.7439 to 7441 of 2017 are allowed. No costs.
Consequently, connected miscellaneous petitions are closed. The
common order dated 17.10.2016 passed by the Central
Administrative Tribunal, Chennai, in O.A. Nos.282 of 2015, 889
& 1342 of 2016 is set aside.

(V.M.V.,J.) (R.H.,J.)
24.01.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga/mtl

To

1.Union of India,
Rep. by Chairman & CEO,
Railway Board, Rail Bhavan,
Ministry of Railways, Raisina Road,
New Delhi - 110 001.

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

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3. Principal Chief Personnel Officer,
O/o.General Manager,
Southern Railway,
Chennai - 3.
4. Chief Personnel Officer/Gazetted,
O/o.General Manager,
Southern Railway,
Chennai - 3.
5. Deputy Chief Commercial Manager/Claims,
Claims Office, MMC IV Floor,
Southern Railway, Park Town,
Chennai - 3.
6. The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai.
7. The Chief Claims Officer,
Southern Railway, MMC V Floor,
Chennai - 3.
8. The Deputy Chief Commercial Manager/Claims,
Claims Office, MMC V Floor,
Southern Railway, Park Town,
Chennai - 3.
9. Ajeeth Saxena,
Chief Claims Officer,
Commerical Head Quarters Office,
MMC V Floor,
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- 10.P.Vallinayagi,
Deputy Chief Commercial Manager/Claims,
Service through CCO,
Moore Market Complex, 5th Floor,
Southern Railway, Chennai - 3.
- 11.A.Sundar,
Inquiry Officer,
The Deputy Chief Commercial Manager/PRS,
2nd Floor, Moore Market Complex,
CCM/PRS/Office,
Southern Railway, Chennai - 3.
- 12.Sathyanarayana Hari,
DCM/MAS & IO,
Divisional Railway Manager Office,
NGO Annexure Building,
1st Floor, Southern Railway,
Chennai Division,
Park Town, Chennai - 3.
- 13.Prabhu Premkumar,
ACM/Rates/MAS, CCM/O/MAS,
G.M.Office, Ground Floor,
Southern Railway,
- 14.The Deputy Chief Personnel Officer/T,M&E,
Headquarters office, Personnel Branch.
- 15.Chief Vigilance Inspector/Medical Department,
General Manager Office,
Vigilance Branch, Chennai - 3.
- 16.Chief Commercial Manager,



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Park Town, Chennai - 3.



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V.M.VELUMANI, J.
and
R. HEMALATHA, J.
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24.01.2023