



W.P.No.219 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.219 of 2023

K. Chandrababu

...Petitioner

Vs.

1. The Director
Bhaba Atomic Research Centre, TROMBAY
Mumbai 400 085.
2. The Dy. Establishment Officer,
Bhaba Atomic Research Centre,
Personnel Division Admn. Section - II
1st Floor, Central Complex,
Chennai 400 085.
3. The Administrative Officer - III
Bhaba Atomic Research Centre Facility,
Kalpakkam Atomic Research Project,
Kalpakkam 603 102.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ or direction or Order in the nature of Writ more particularly a Writ of Certiorarified Mandamus to call for the production of records relating to the order dated 14.06.2022 made in O.A. No.310/00164/2016 passed by the Central Administrative Tribunal, Chennai Bench, quash the same and direct the respondents to extend all benefits of promotion from Trade Helper-B to Trades man - A to the petitioner.

For Petitioner : Mr. S. Senthilnathan

For Respondents : Mr. S. Janardhanan, SPCGC

ORDER

(R.HEMALATHA, J.)

This petition is filed challenging the orders dated 14.06.2022 of the Central Administrative Tribunal, Chennai Bench, in O.A.No.164/2016.

2. The germane facts of the case in brief are as follows:

- i. The petitioner Chandrababu was employed as a Helper Grade-A with the respondents' organisation i.e. Bhaba Atomic Research Centre Facility, Kalpakkam, recruited under land looser quota.



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- ii. On 19.04.2004, he was served with a charge memo and was intimated of an enquiry under Rule 14 of the CCS (Classification, Control and Appeal) Rules 1965. The allegation was the suppression of material information pertaining to a criminal case No.CC 307/97 for bigamy filed by his wife C. Sundari in the District Munsif cum Judicial Magistrate Court, Thirukazhukundram.
- iii. In the inquiry proceedings he had admitted regarding suppression of the criminal case against him and also the fact that he married another woman when his wife was alive. The Inquiry Officer's report was submitted on 05.08.2005 holding all the charges proved against him. The final order by the Disciplinary Authority was passed on 22.02.2006 inflicting the penalty of "removal from service".
- iv. The petitioner went on appeal with the Appellate Authority who upheld the penalty which was again confirmed by the Revisional Authority.



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y. Aggrieved over this, the petitioner approached the Central Administrative Tribunal, Chennai Bench, in O.A. No.467/2007 in which vide orders dated 19.12.2008, the Tribunal found the punishment of removal from service disproportionate to the alleged misconduct and therefore set aside the impugned final order of the Disciplinary Authority. The matter was remitted back to the Disciplinary Authority to consider awarding any other punishment except dismissal/removal or compulsory retirement from service. It was also directed to reinstate the petitioner in service forthwith and stating that he will not be eligible for backwages for the period from the date of removal from service to the date of reinstatement and also observed that this period would be counted for pensionary benefits.

vi. The respondents challenged this order of Central Administrative Tribunal, Chennai Bench, dated 19.12.2008, in this Court in W.P.No.12626 of 2009.

vii. This Court, vide its orders dated 05.10.2009 dismissed the petition and confirmed the order of the Central Administrative Tribunal,



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viii. The respondents filed a SLP (Civil) No.1274/2010 in the Supreme Court, which was dismissed.

ix. Thereafter the petitioner was reinstated on 03.05.2010. His punishment was reduced to one of reduction of pay to the minimum of Pay band starting Rs.5,200/- for a period of three years with further directions that during the period of such reduction the petitioner will not earn any increments of pay and on expiry of three years, the reduction will have the effect of postponing the future increments of pay.

x. On an appeal by the petitioner, this was confirmed by the Appellate Authority.

xi. The petitioner submitted the representation for reduction of revised penalty on 22.09.2013 which was rejected on 01.05.2014.

xii. He again represented for promotion on 18.02.2015 which was replied on 27.03.2015 reiterating the same stance. In the said reply the petitioner was informed that he would be considered for track change/promotion to the higher grade on completion of 15 years of



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xiii. This was challenged by the petitioner in O.A. No.164/2016 before the Central Administrative Tribunal, Chennai Bench. This O.A. was dismissed by the Central Administrative Tribunal, Chennai Bench, vide orders dated 14.06.2022. Hence the present petition before this Court.

3. Heard Mr. S. Senthilnathan, learned counsel appearing for the petitioner and Mr. S. Janardhanan, learned SPCGC, appearing for the respondents.

4. The learned counsel for the petitioner would contend that the direction of the Central Administrative Tribunal, Chennai Bench, in O.A.No.467/2007 was clear as to that the 'break in service' i.e. the period between his removal from service and his reinstatement was not to be considered for backwages but will be counted for pensionary benefits. According to him, the petitioner was allowed financial upgradation under



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MACP scheme with effect from 01.07.2015 vide order dated 30.08.2016.

This being so, it was contended that denial of his promotion was unacceptable. According to the petitioner, the punishment of "removal from service" was set aside and implementation of this order was effected by the respondents belatedly which is not his fault and therefore denial of promotion to him tantamount to double jeopardy. He was reinstated only on 03.05.2010 and not considering the period from 24.02.2006 to 02.05.2010 as active service even though the punishment of removal from service was set aside, smacks of bias, it was argued. It was also contended that the petitioner was eligible for promotion as he had completed 15 years service (including the break in service) and therefore, he is entitled to the benefits on promotion now though he retired from service. The counsel had prayed for quashing the order of the Central Administrative Tribunal, Chennai Bench, in O.A. No.164/2016 and render justice by releasing his promotion and consequential benefits of promotion from Trade Helper-B to Trades man-A.



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5. Per contra the learned counsel for the respondents contended that the order of the Central Administrative Tribunal, Chennai Bench, in O.A. No.467/2007 was unambiguous, unequivocal, clear and specific. According to him the term 'qualifying service' under Pension Rules is defined both in the 1972 Rules and 2021 Rules. Similarly, he contended that the term retirement benefits is also defined in both the Rules. His further contention was that "qualifying service" means service rendered while on duty or otherwise which shall be taken into count for the purpose of pension and gratuity admissible under these rules. "Retirement benefits" includes pension or service gratuity and retirement gratuity, where admissible. Thus, he contended that the 'break in service' due to the punishment cannot be counted as qualifying service and the interpretation of the petitioner of the Central Administrative Tribunal, Chennai Bench's order dated 19.12.2008 in O.A. No.467/2007 was erroneous.

6. The petitioner was charge sheeted for suppression of material facts of the Criminal case against him filed by his wife for



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bigamy. Irrespective of the fact that he was acquitted in the criminal case, the suppression of the criminal case from his employer and the indulgence in bigamy are all established. The order of the Central Administrative Tribunal, Chennai Bench, in O.A. No.467/2007 was not a 'clean chit' to the petitioner. It was only on technical grounds that the Central Administrative Tribunal, Chennai Bench, considered the punishment disproportionate to the gravity of the alleged misconduct. The Central Administrative Tribunal, Chennai Bench, had only directed the respondents to award any other punishment other than dismissal/removal/compulsory retirement taking into account his acquittal in the criminal case. The Criminal Court acquitted the petitioner not on the merits of the case but on the withdrawal of the complaint by his wife. Moreover, the petitioner's punishment was effected only after the order of the Central Administrative Tribunal, Chennai Bench, was found in order by the higher courts. Therefore, the petitioner was found guilty of bigamy which was punishable as per Service rules. He was also punished. Thus his promotion is not a matter of right especially when he is guilty of bigamy and has been punished



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by way of withholding his increments. In fact the Central Administrative Tribunal, Chennai Bench, in O.A. No.164/2016, had relied on the decision in *Union of India vs. K.V. Janakiraman case* reported in *AIR 1991 SC 2010* wherein the Supreme Court has held thus:

"An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently..... In fact, considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified."

Moreover, the Central Administrative Tribunal, Chennai, in O.A.No.467/2007 had specifically stated that the applicant would not be eligible for backwages for the period from the date of his removal from service to the date of reinstatement. It was further observed that, however this period would be counted for "pensionary benefits". In such



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circumstances, the petitioner herein cannot claim any right to be promoted. Further, the Central Administrative Tribunal, Chennai, in O.A.No.164/2016 had given cogent reasons for arriving at its decision.

7. In the such circumstances, we find no merit in the present petition. The order of Central Administrative Tribunal, Chennai Bench, in O.A. No.164/2016 is perfectly in order.

8. In the result, the Writ Petition is dismissed. No costs. The order of Central Administrative Tribunal, Chennai Bench, in O.A. No.164/2016 is upheld.

(V.M.V.,J.) (R.H.,J.)
02.02.2023

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



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