



W.P. (MD) No. 4802 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 19.12.2022

PRONOUNCED ON : 04.01.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P(MD).No.4802 of 2020
WMP(MD).Nos.4174 of 2020

P.Silas Vijayakumar

...Petitioner

Vs

1.The Union of India
Divisional Finance Manager
Southern Railway
Madurai 625 016

2.The Divisional Railway Manager
Southern Railway
Madurai Division
Madurai

3.The Manager
State Bank of India CPPC
112, Kaliamman Kovil Street
Virugambakkam
Chennai 600 092

4.The Registrar
Central Administrative Tribunal
Chennai 600 104

...Respondents



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Prayer : Writ Petition has been filed under Article 226 of Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order issued by the 4th respondent in MA/310/00847/2017 in OA/310/00644/2002 dated 01.02.2018 and consequential order dated 02.11.2018 in Dy.No.495/2018 in RA.No.13/2018 in MA.847/2017 of the 4th respondent and quash the same and consequently direct the respondents to grant equal pay from 01.07.1986 to 30.11.2009 on par with the petitioner's Junior Sri.K.Natarajan and payment of personal pension of Rs.112/- twice sanctioned by the Tribunal under ministry's letter to be continued and III pay commission pension of Rs.873/- instead of Rs.997/- notified and to grant notional increment with all retirement benefits as retired on 30.06.1986.

For Petitioner : Mr.P.Silas Vijayakumar
Party-in-person

For R1 & R2 : Mrs.L.Victoria Gowri
Deputy Solicitor General of India

For R3 : Mr.V.P.Rajan

: Mr.Ajmal Khan, Senior Counsel
Amicus Curiae

ORDER

(Made by **R.VIJAYAKUMAR,J.**)

The present writ petition has been filed challenging the dismissal of a miscellaneous application in a disposed of original application by the Central



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Administrative Tribunal. The petitioner has also challenged the dismissal of the review application which was filed challenging the order passed in the miscellaneous application.

2.The petitioner was appointed as a Ticket Examiner on 16.11.1950 in the Southern Railway and he retired as a Chief Travelling Ticket Inspector on 30.06.1986 on attaining the age of superannuation. At the time of retirement, the applicant was receiving a scale of pay of Rs.700-900 with basic pay of Rs.760/-. Since the petitioner was appreciating from Rs.700/- to Rs.900/- grade from 30.11.1984 to 12.02.1985, the petitioner increment was advanced to 01.03.1986 from 01.06.1986. The petitioner's pension was calculated on last 10 months average pay and it was fixed at Rs.997/- per month. In the pension pay order, the petitioner was mistakenly granted Rs.873/- as pension and Rs.112/- personal pension from 01.07.1986. It continued from 01.07.1986 to 31.12.1987.

3.The petitioner had filed O.A.No.901 of 1997 before the Central Administrative Tribunal to fix his pension at Rs.1078/- with effect from 01.07.1986 with all consequential benefits including the arrears. The said original application was allowed on 06.08.1999 directing the department to



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rework the pension and other benefits with effect from 01.07.1986. This order was challenged by the Administration before the High Court in W.P.No. 1409 of 2000. This Court had dismissed W.P.No.1409 of 2000. Pursuant to the dismissal of the said writ petition, the administration has sanctioned pension at Rs.1078/- from 01.07.1986 vide order dated 28.01.2002. Not being satisfied, the petitioner had challenged the said order dated 28.01.2002 in O.A.No.644 of 2002. The Tribunal was pleased to allow the application and directed the administration to rework the applicant's pension in accordance with law, considering the observation made by the Tribunal in O.A.No.901 of 1997.

4. Thereafter, the administration passed an order on 17.06.2003 fixing the applicant's pension at Rs.1078/-, but rejected the applicant's claim for payment of personal pension. The petitioner had filed a contempt petition in C.A.No.90 of 2003 contending that the order dated 17.06.2003 is in violation of the final order in O.A.No.644/2002. The said contempt petition was closed granting liberty to the petitioner to challenge the order dated 17.06.2003.

5. The petitioner herein had filed O.A.No.677 of 2004 challenging the order dated 17.06.2003. This application was dismissed by the Tribunal on



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29.07.2005. This order was challenged by the applicant in .W.P.No.31172 of 2005. The writ petition was allowed on 06.09.2007 directing the administration to re-fix the petitioner's pension on par with pay of his immediate junior Sri.K.Natarajan with effect from 01.01.1984.

6.The petitioner had filed a Contempt Petition in Contempt Petition No. 680 of 2008 before the High Court for non-compliance of the said order. Pending Contempt Petition, the Railway Administration had passed an order on 01.04.2009 re-fixing the applicant's pension on par with pay of Sri.K.Natarajan with effect from 01.01.1984. Thereafter, the High Court was pleased to hold that the petitioner is not entitled for personal pension as he has opted for 4th pay scale under the 4th Pay Commission. Thereafter, the Contempt Petition dismissed on 02.11.2009.

7.Not being satisfied, the petitioner had filed W.P(MD).No.24984 of 2009 seeking revision of seniority, correct fixation pay, continuous payment of personal pension and re-fixation of applicant's pension on par with Sri.K.Natarajan. The High Court was pleased to dismiss the writ petition on 22.04.2010 after holding that the petitioner's claim is unsustainable for re-fixing



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his pension on par with his junior Sri.K.Natarajan. The High Court further found that the personal pension had been stopped as per Rules. However, the High Court was pleased to grant liberty to the petitioner to challenge the memo dated 01.04.2009. The petitioner had filed O.A.No.1128 of 2010 to quash the memo dated 01.04.2009 and to revise the pension as per W.P.No.31172 of 2005. The said application was dismissed by the Tribunal on 02.02.2011 holding that the personal pension and revision of seniority have already been rejected in W.P(MD).No.24984 of 2009. The petitioner challenging the order of the Tribunal in W.P(MD).No.8676 of 2011. However, the said writ petition was dismissed on 01.04.2013.

8.O.A.No.644 of 2002 was disposed of by the Tribunal on 20.03.2003. The petitioner had filed a miscellaneous application in M.A.No.847 of 2017 in O.A.No.644 of 2002. In the said miscellaneous application, the petitioner had prayed for 3rd Pay Commission pension of Rs.873/- instead of Rs.997/-. He prayed for setting aside the memo dated 01.04.2009. He had further prayed for an equal pay from 24.06.1974 to 30.11.2009 and pension from 01.12.2009 on par with his junior Sri.K.Natarajan. He prayed for payment of personal pension of Rs.112/- with effect from 01.07.1986. The petitioner had further prayed for



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his 60 days LAP, encashment of LHAP and difference in DCRG. That apart the petitioner has prayed for revision of seniority list. This miscellaneous application came to be dismissed by the Tribunal on 01.02.2018 on the ground that it is not maintainable, in view of the order passed in the previous application and the orders passed by the High Court.

9.The Tribunal was further pleased to hold that the prayer in the miscellaneous application is beyond the scope of main O.A namely O.A.No.644 of 2002. Thereafter, the petitioner had filed Review Application No.13 of 2018 to review the order in M.A.No.847 of 2017. This review application was dismissed by the Tribunal on 02.11.2018 on the ground that the petitioner could not point out any error on the face of the record to invoke the review jurisdiction. This order passed in M.A.No.846 of 2017 on 03.10.2017 and the order passed in review application in Review Application No.13 of 2018 on 02.11.2018 are under challenge in the present writ petition.

10.The petitioner had chosen to appear party-in-person and he is aged about 92 years. Hence, this Court has requested learned Senior Counsel Mr.M.Ajmal Khan to assist the Court. The learned Senior Counsel after



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perusing all the orders passed by the Tribunal and the High Court, was pleased to narrate the dates and events in sequence and assisted the Court.

11.From the records and the contention of the party-in-person, it could be seen that the petitioner has time and again is insisting upon the payment of equal pay on par with his junior Sri.K.Natarajan and for payment of personal pension. In paragraph No.10 of the order passed by the Tribunal in O.A.No.677 of 2004, the Tribunal was pleased to hold that the Sri.K.Natarajan is a sports person and he was granted increment from time to time for participation in sports event which has been dealt with by the separate Rules. Hence, the Tribunal was pleased to observe that the petitioner cannot compare himself with Sri.K.Natarajan. This order was challenged by the writ petitioner in W.P.No. 31172 of 2005. The said writ petition was allowed on 06.09.2007 and pursuant to the said writ order, the Railway Administration had passed an order on 01.04.2009 re-fixing the applicant's pension on par with Sri.K.Natarajan with effect from 01.01.1984.

12.However, not being satisfied with the said order, the petitioner had filed W.P(MD).No.24984 of 2009 seeking equal pension with Sri.K.Natarajan



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with effect from 24.06.1974. This Court by an order dated 22.04.2010 dismissed the writ petition after holding that the petitioner cannot compare himself with the said Sri.K.Natarajan on the ground that the said Sri.K.Natarajan is a sports personality and he was given out of turn promotion ahead of the writ petitioner. This order has not been challenged and it has become final. Hence, the petitioner can no longer raise the issue of equal pension on par with Sri.K.Natarajan with effect from 24.06.1974.

13.The next issue relates to the payment of personal pension. Admittedly, the provision for payment of personal pension was available in the 3rd Pay Commission. However, the petitioner has voluntarily opted to shift to the IV Central Pay Commission scale of pay with effect from 01.01.1986. The personal pension has been abolished in the IV Central Pay Commissioner scale of pay and hence, the petitioner can no longer seek for personal pension after opting to enter into IV Central Pay Commission scale of pay with effect from 01.01.1986. The prayer for personal pension was rejected by the Tribunal in their order dated 29.07.2005 in O.A.No.677 of 2004. Thereafter, the petitioner had filed W.P.No.31172 of 2005 challenging the said order. The Railway Administration has passed an order on 01.04.2009 rejecting the personal pension. The said



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rejection was challenged by the writ petitioner in W.P(MD).No.24984 of 2009.

W.P(MD).No.24984 of 2009 was disposed of by the High Court on 22.04.2010.

In paragraph No.14, the Hon'ble Division Bench was pleased to hold that the petitioner is not entitled to the said personal pension. This order was not challenged and it has become final.

14. O.A.No.644 of 2002 was disposed of on 20.03.2003. After a period of 14 years, the petitioner has chosen to file a miscellaneous application in M.A.No.847 of 2017 in O.A.No.644 of 2002. In the said miscellaneous application, the petitioner has sought for the same prayers which were already rejected in O.A.No.677 of 2002 and W.P(MD).No.24984 of 2009. The Tribunal had rightly dismissed the miscellaneous application both on merits and on the ground of maintainability. Once the main O.A has been disposed of, the miscellaneous application cannot be filed seeking a different prayer. Not being satisfied, the petitioner had filed a Review Application in R.A.No.13 of 2018. This was also rightly rejected by the Tribunal on 02.11.2018.

15.The narration of the above said facts will clearly disclose that the petitioner is attempting to raise the same issue again and again unsuccessfully and wasting judicial time. When the order of this Court in W.P(MD).No.24984



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of 2009 dated 22.04.2010 has become final, the petitioner would not be entitled to raise the same plea again by way of miscellaneous application before the Tribunal.

16. In view of the above said facts, we do not find any merit in the writ petition. Considering the age of the party-in-person, we refrain from imposing cost. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.,)

(R.V.J.,)

04.01.2023

Index :yes
Internet :yes
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To

1. The Divisional Finance Manager
Union of India
Southern Railway
Madurai 625 016

2. The Divisional Railway Manager
Southern Railway
Madurai Division
Madurai

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**D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR, J.**

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Pre-delivery Order made in
W.P(MD).No.4802 of 2020
WMP(MD).Nos.4174 of 2020

04.01.2023