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Writ Petition No.935 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.03.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Petition No.935 of 2024
and W.M.P.Nos.973 of 2024**

- 1.Union of India,
Represented by the Chief Postmaster General,
Tamil Nadu Circle,
Chennai – 600 002.
 - 2.The Post Master General,
Central Region,
Tiruchirapalli – 620 001.
 - 3.The Post Master General,
North Region,
Chennai – 600 002.
 - 4.The Superintendent of Post Officers,
Cuddalore Division,
Cuddalore – 607 001.
- ... Petitioners

Vs

- 1.The Central Administrative Tribunal (CAT),
Chennai Bench, represented by its Registrar,
High Court Campus,
Chennai – 607 001.



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2.A.Ramalingam

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 1st respondent and quash the same the order passed in O.A.No.1830 of 2017 dated 07.03.2023 on the file of the Hon'ble Central Administrative Tribunal, chennai and pass such further orders.

For Petitioners : Mr.A.R.L.Sundaresan
Additional Solicitor General
for Mr.J.Madanagopal Rao, SPC

For Respondents : R1 – Tribunal
Mr.S.T.Varadarajulu for R2

ORDER

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

The Writ Petition had been filed challenging the order of the Tribunal, wherein, the Tribunal had quashed the order of the fourth petitioner, dated 18.08.2017, wherein, the request of the respondent was rejected altering the date of joining on par with an another candidate and take the period from the actual date of joining and also to count that as qualifying services for grant of pensionary benefits.



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2. Heard Mr.A.R.L.Sundaresan, learned Additional Solicitor General appearing for the petitioners and Mr.S.T.Varadarajulu, learned counsel for the second respondent.

3. Mr.A.R.L.Sundaresan, learned Additional Solicitor General appearing for the petitioners would submit that the second respondent had joined the services of the Department as Postman with effect from 27.11.2003 under the Physically Handicapped quota and he had superannuated on 31.01.2012, where he had rendered a total service of only eight (8) years and two (2) months as a Postman. Therefore, he would not be eligible for pension, as his qualifying services was less than ten (10) years. He would submit that the second respondent was provisionally selected for appointment on 28.01.2001, subject to him producing the disability certificate. Originally, the Medical Board had not found him fit to be given the benefit of the quota of Physically Handicapped. However, a subsequent Medical Board issued a certificate that the second respondent could be appointed under the Physically Handicapped quota. Based on the said certificate, an order of appointment was issued to the second respondent on 27.11.2003. One another candidate was also provisionally selected along



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with the second respondent. The Medical Board had cleared his name for appointment and he was appointed as a Postman on 12.11.2001 under the Physically Handicapped quota. After the superannuation, the second respondent had made a claim to treat him on par with the another employee who had been appointed like that of the second respondent and got the benefit of pensionary benefits. He would submit that the said request was rejected by the fourth respondent, which was the subject matter of challenge before the Tribunal. He had approached the Tribunal in O.A.No.863 of 2012, wherein, the Tribunal after observing that the degree of hearing impairment cannot change in a short period of time had therefore, to ascertain as to the correctness of both the Reports, that was made by the Medical Board in respect of the second respondent, directed the issue to be referred to the Medical Board to assess the degree of impairment and thereafter, to take a decision. Pursuant to the directions of the Tribunal, the matter was referred to the Medical Board and the Medical Board in its Report had concluded that due to the non-availability of Audiogram Report and speech discrimination results with any of the earlier report of the second respondent, non-recording of the hearing disability, at that relevant point of



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time could not be ascertained. Since, the second respondent had not completed 10 years of qualifying service, the petitioners have declined to grant pensionary benefits, as his case would fall outside the scope of minimum qualifying service which is required for extending the pensionary benefits to an employee. However, the Tribunal without considering the material facts and the distinction between the second respondent and similarly appointed person, had directed the petitioners to treat the date of appointment of the second respondent as 12.11.2001 on par with the other candidate, who came to be appointed on 12.11.2001 and thereby extended the pensionary benefits to the first respondent.

4. He would submit that the order of the Tribunal without considering the material facts or even giving a finding as to why he should be treated on par with the other candidate or even holding that the first certificate issued by the Medical Board was bad had passed the order impugned herein. He would reiterate that the actual service of the second respondent was only 8 years and 2 months falling much short of the qualifying services prescribed under CCS (Pension) Rules for grant of pension. Therefore, he would seek



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interference to the order impugned before us.

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5. Countering his arguments, Mr.S.T.Varadarajulu, learned counsel appearing for the second respondent would submit that the second respondent is admittedly, a Physically Handicapped person with a disability of 60 decibel and more. He would further submit that the statutory provisions of a person with Disabilities Act defines the impairment of hearing disability as 60 decibel and even though the first Report of the Medical Board had ascertained the disability at 60 decibel and more, had not recommended the case of the first respondent for appointment in the category of Physically Handicapped quota. In view of the further request made by the second respondent, he was referred again to a Medical Board, which had given a finding that the second respondent had a hearing impairment of 70 decibel & more and had recommended his name. He would submit that the Medical Board at the first instance, even though had given a report, but had failed to recommend, which is contrary to the provisions of the enactment. He would further submit that the second respondent ought to have been appointed on the basis of the first Medical



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Board Report itself and therefore, there was no error on the part of the Tribunal in directing the second respondent to be treated who had been appointed on par with the other candidate and to extend the pensionary benefits. He would submit that it is not the fault of the second respondent which has led to the circumstances and therefore, he should not be denied the statutory benefits available to him. Therefore, he would pray this Court to dismiss the Writ Petition and direct the petitioners to comply with the order of the Tribunal.

6. We have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record before this Court.

7. It is an admitted fact that the Medical Board at the first instance during the year 2001 had found that the second respondent to be not fit for appointment under the category of physically handicapped quota. However, the Medical Board in the subsequent year had given a certificate that he was fit to be considered under the physically handicapped category. Thereafter,



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he had also been granted appointment in the year 2003. The second respondent had not challenged the recommendation of the Medical Board dated 11/09/2001 under which he had been found to be not fit. Further, even after the appointment in the year 2003, the second respondent had not sought a similar relief. Only after his superannuation, the second respondent has sought for the said relief. The conduct of the second respondent would show that he has acquiesced himself of the position and had waived a statutory right that had been available to him. After nearly a decade, the second respondent had questioned the Medical Board's certificate dated 11.09.2001. His claim was entertained in the earlier round of Writ Petition and the issue was directed to be referred to the Medical Board for examination. However, the Medical Board which had analysed the earlier report, was not able to come to a conclusion in view of the non-availability of certain reports. Had the second respondent raised the issue at the earliest point of time namely immediately after the Medical Board issued a certificate on 11/09/2001 or atleast on joining, that is on 27.11.2003, the second respondent might have been successful in establishing his case.



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8. Further we are of the view that the claim of the second respondent at this length of time that is almost after a decade of the Medical Board's certificate, dated 11/9/2001 would be hit by delay and laches only to draw us to a conclusion that the second respondent had acquiesced himself of the position which would render him ineligible to make such a claim after the employee had attained the superannuation. All these aspects have not been considered by the Central Administrative Tribunal while deciding the issue. Further as rightly pointed out by the learned Additional Solicitor General that no reason has been assigned as to why the second respondent should be treated on par with the other candidate as claimed by him.

9. For the foregoing reasons, we are inclined to interfere with the order passed by the Tribunal. In fine this Writ Petition is allowed and the order passed by the Tribunal in O.A.No.1830 of 2017 is set aside. However, there shall be no order as to cost. Consequently connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)



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19.03.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Buildings,
Chennai – 600 104.



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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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