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W.P.No.10697 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.10697 of 2023
and WMP.No.10643 of 2023

1.The General Manager
Southern Railway
Park Town, Chennai – 3.

2.The Chief Workshop Manager
Central Workshops, Personnel Branch
Ponmalai, Trichy – 4.

... Petitioners

Vs.

1.Mr.A.Mohan

2. The Registrar
Central Administrative Tribunal
Madras Bench, Chennai

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari to call for the records pertaining to order dated 12.07.2022 passed in OA.No.681 of 2018 on the file of the 2nd respondent and quash the same.

For Petitioners : Mr.A.R.Sakthivel, SPC



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For Respondents : No appearance – R1.
R2 - Tribunal

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ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The writ petition on hand has been instituted challenging the order dated 12.07.2022 passed in OA.No.681 of 2018.

2. The General Manager, Southern Railway and the Chief Workshop Manager Central Work Shops are the petitioners. The first respondent filed OA challenging the order dated 04.08.2017 and for a direction to revise the date of promotion as 04.06.2011 on par with his juniors ignoring the uncommunicated adverse remarks for the years 2008, 2009 and 2010 with consequential fixation of pay and all other attendant benefits appurtenant thereto.

3. The first respondent was initially appointed in Central Workshop, Ponmalai as Khalasi on 20.07.1985 and he was promoted as Khalasi helper from 18.07.1989. Subsequently, promoted to the posts of Technician Grade – III, w.e.f. 01.04.1997 and as Technician-II and Technician-I and retired from service on attaining the age of superannuation in December 2019.

4. During the verge of retirement the Original Application was filed



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seeking retrospective promotion on par with the junior and the monetary benefits. The Tribunal disposed of the Original Application with a direction to the writ petitioners herein to reconsider the request of the first respondent dated 07.03.2015 for retrospective promotion as Technician Gr.I from the date of promotion of his immediate junior by modifying the gradings for the years 2008, 2009 and 2010 as “Good” and pass appropriate orders.

5. The fact remains that the performance of the first respondent for the years 2008, 2009 and 2010 was recorded by the Reporting Officer as “below average”. The first respondent was declared not suitable for promotion by the committee in order dated 31.05.2011.

6. It is needless to state that the promotion was granted based on the service records and the confidential report maintained by the department.

7. The learned counsel for the petitioners would submit that adverse remarks were not challenged during the relevant point of time. The Original Application itself was filed in the year 2018, in verge of retirement of the first respondent. The adverse report was made for the years 2008, 2009 and 2010. Thus the Original Application itself is not entertainable.



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8. Pertinently, even as per the first respondent his immediate junior was promoted to the higher cadre w.e.f.04.06.2011. Even at that point of time he has neither approached the authority as contemplated under the rules or filed the Original Application before the Tribunal seeking retrospective promotion on par with his immediate junior. Thus, the Original Application filed before the Tribunal itself is barred under Section 21 of the Administrative Tribunal Act, 1985.

9. Section 21 of the Administrative Tribunal Act, 1985 provides limitation. Accordingly, the application ought to have been filed within a period of one year. In the present case, the adverse remarks were made for the year 2008, 2009 and 2010. Overlooking the name of the first respondent, promotion was granted to his immediate junior in the year 2011. Therefore, the first respondent ought to have approached the authority within a period of six months and thereafter filed OA before the Tribunal within a period of one year. However, the Original Application itself was filed after a lapse of about seven years from the date of promotion of immediate junior. Therefore, hit by the period of limitation set out under Section 21 of the Administrative Tribunal Act.



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10. The impugned order dated 04.08.2017 was taken into consideration for the purpose of entertaining the Original Application by the Tribunal. However, the impugned order reveals that the first respondent has submitted a representation only on 31.03.2016, after a lapse of about five years from the date of promotion of his immediate junior. Even under section 21 of the Administrative Tribunal Act, representation must be made within a period six months from the date of cause of action and thereafter within a period of one year application may be before the Tribunal, Therefore, the order impugned would not provide a cause for institution of Original Application, since, the first respondent submitted representation only on 31.03.2016, after the lapse of five years from the date of promotion of his immediate junior.

11. Even on merits, the Tribunal cannot direct the authorities to modify the adverse remarks made in the service records. If it is found that certain adverse remarks entered in the service records remains uncommunicated, those remarks are to be neglected and should not be taken into account, while considering the employees for further promotion.

12. At the outset, uncommunicated adverse remarks cannot be relied



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upon for the purpose of denying promotion to the employees. However, in the present case, the first respondent has not challenged the promotion of his junior nor made any representation seeking retrospective promotion on par with his immediate junior, during the relevant point of time. Thus, the findings by the Central Administrative Tribunal that the adverse remarks made by the authorities is to be converted as good by replacing the adverse remarks of below average, is beyond the scope of power of judicial review and therefore unsustainable.

13. As far as the direction to reconsider the request of the first respondent is concerned, it will not do any service to the cause of justice, since the first respondent had already retired from service in the year 2019 and the initiation of the Original Application before the Central Administrative Tribunal itself was belated and hit by Section 21 of the Administrative Tribunal Act. Consequently, the order impugned passed by the Tribunal in OA.No.681 of 2018 dated 12.07.2022 is set aside and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.]

[M.J.R., J.]

12.12.2024



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Index: Yes/No

Speaking/Non-speaking order

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To

1. The Registrar

Central Administrative Tribunal

Madras Bench, Chennai.



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