



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.07.2024

PRONOUNCED ON : 08.08.2024

CORAM

THE HONOURABLE MR. ACTING CHIEF JUSTICE

D.KRISHNAKUMAR

AND

THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

Writ Petition No.19776 of 2022

S.Gururajan

... Petitioner

Vs

- 1.The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Campus,
Chennai – 600 104.
- 2.Union of India
Rep., by The Chief Postmaster General,
Tamil Nadu Circle,
Chennai – 600 002.
- 3.Superintendent of Railway Mail Service,
Chennai Sorting Division,
Chennai – 600 008.
4. The Head Record Officer,
Chennai Sorting Division,
Chennai- 600 008.

... Respondents



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PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, calling for the concerned records relating to the impugned order dated 30.12.2020 given in O.A.No.1070 of 2016 passed by the first respondent and quash the same.

For Petitioner : Mr.S.Ramaswamy Rajarajan

For Respondent : Mr.S.N.Parthasarathi SCGSC for R2

ORDER

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

The instant Writ Petition had been preferred as against the order of the Administrative Tribunal, which had rejected the Writ petitioner's challenge to the order passed by the second respondent herein in rejecting the claim of the petitioner seeking for counting his officiating service in the Group-D post for determining his seniority.

2.Heard Mr.S.Ramaswamy Rajarajan, learned counsel appearing for the petitioner and Mr.S.N.Parthasarathi, learned Senior Central Government Standing counsel appearing for the second respondent.

3.The case of the petitioner is that he had been originally ap-



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pointed as an Extra Departmental Mail-man in the year 1984 and based upon his seniority in the Extra Departmental Cadre I, he was selected as an approved candidate for Group D promotion by the Departmental Promotion Committee on 22.03.2000. He was ordered to work as a Group D on officiating capacity in a regular vacancy by the fourth respondent vide order dated 05.09.2000. However, he was absorbed in the regular vacancy on 24.05.2003 and on completing his probation, his services in Group D cadre was confirmed by order dated 25.08.2005. Thereafter, the petitioner had made a representation to the third respondent herein seeking to count his service rendered during the period between 05.09.2000 to 23.05.2003 in the officiated capacity also for the purposes of his seniority. Since no response had emanated from the third respondent, he had made a further representation on 05.03.2007 to the fourth respondent. However, the said representation was rejected by the third respondent contending that even though he was approved for promotion, the said promotion could not be granted due to the ban that had been imposed and immediately after the ban was lifted, he had been appointed in the regular vacancy from 26.05.2003. The uninterrupted officiating period was not considered by the third respondent. Hence, he had preferred an



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appeal to the second respondent. But however, the same was also rejected by the second respondent by order dated 18.08.2010. Hence, he was constrained to approach the Central Administrative Tribunal by preferring O.A.No.1472 of 2012, and after hearing the parties, the Tribunal by order dated 26.11.2013, had set aside the order passed by the second and third respondents and had further direction to consider the case of the petitioner by referring to various judgments of the Hon'ble Apex Court. Without considering the case of the petitioner on the proper perspective particularly on the judgment that had been relied upon by the petitioner and as recorded by the Tribunal in its order dated 26.11.2013, the second respondent had again rejected the claim of the petitioner on the very same grounds. According to him, the Tribunal in the impugned order had not considered these facts and had referred to the judgment of the Hon'ble Apex Court in *Uma Devi's* case to conclude that there cannot be any financial burden that could be placed on the authority.

4. He would further contend that the Tribunal had also erred in relying upon another judgment of the Hon'ble Apex Court judgment, which



related to the promotions where it was held that promotees were not entitled to count their *ad hoc* service for the purpose of computing their seniority. In this connection, he would also rely upon the various judgments of the Hon'ble Apex Court as

a) ***D.P.Doval & Ors., vs. The Chief Secretary Government of UP and Ors.***, reported in ***1984 AIR 1527***

b) ***L.Chandra Krishna Singh vs. State of Manipur & Ors.***, reported in ***1999 SCC (L&S) 1460***;

c) ***Rudra Kumar Sain and Ors., vs. UOI & Ors.***, reported in ***2000 SCC (L&S) 1055***; and

d) ***Chief Commissioner of Income Tax & Ors., vs. V.Subba Rao & Ors.***, reported in ***2004 SCC (L&S) 201***

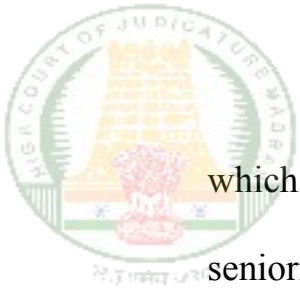
and contend that when the appointments having made based upon the meritorious process, then he would be entitled for counting his services on the officiating capacity. According to him, these aspects have not been considered by the Tribunal and hence, he would seek interference with the order passed by the Tribunal.

5.Countering his arguments, the learned Senior Standing



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counsel appearing for the respondents 2 to 4 would submit that the petitioner had been working as an Extra Departmental Staff and based upon his seniority alone, he was considered for the post of Group D by the Departmental promotion Committee. He would further contend that even though the petitioner was included in the panel for promotion, since there was no vacancy at the relevant point of time, he was not promoted and when his turn was to be taken up. There was a ban on recruitment by the Department in the year 2000 and therefore, the petitioner was not accommodated in the vacancy which arose in the future. But however, the ban was lifted and since taking into consideration of a vacancy for the year 2001, the petitioner was regularly appointed to the post of Group D in 2003 and his probation was also confirmed in the year 2005. Further the order that appointed him on officiating capacity in Group D cannot be treated as filling up of any substantial vacancy, as the said order also indicates that the same had been made only temporarily i.e., on an adhoc basis. He would further contend that the petitioner had also admitted that he had been promoted to Group D from the post of Extra Departmental Mail-man based upon his seniority. According to him, the judgments relied upon by the learned counsel for the petitioner are all judgments



which relate to a meritorious recruitment process and is not based upon seniority simplicitor. However, the judgment relied upon by the Tribunal was a judgment which relates to a promotion. Hence, he contended that the petitioner cannot draw equality based upon the judgments relied upon by him, and his case is only governed by the judgment of the Apex Court with regard to the promotion. Hence, he would submit that there is no infirmity in the order impugned before this Court.

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

7.It is an admitted case that the petitioner had been promoted as a Group D person from the cadre of Extra Departmental Mail-Man Grade I. The said promotion is based upon seniority and not on merits. He was also appointed to the Group D post in officiating capacity on temporary basis.

8.As rightly pointed out by the learned Senior Standing Counsel the



judgments relied upon by the learned counsel for the petitioner are all relates to a person who had been appointed on officiating capacity pursuant to a meritorious selection in the recruitment process as they could not be recruited for one or other reasons.

9.In this case, the petitioner had not gone through any mer-itorious selection and had been promoted only on the basis of his seni- ority. The Tribunal had rightly relied upon the judgment of the Hon'ble Apex Court in *Civil Appeal No.1606 of 2020, dated 14.02.2020 in the case of Vinod Giri Goswami & Ors. vs. State of Utharkand & Ors.*, where the Hon'ble Apex Court in categorical terms had held that the pro-motees are not entitled to count their *ad hoc* service for the purpose of computing their seniority. It has also been brought on record that the petitioner even though was in the officiating capacity as Group D em- ployee, he had been paid his service benefits only based upon his substantive post namely GDS post and not on the pay scale of Group D cadre.

10.In such event, we do not find any infirmity in the order



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impugned before us and in fine, the Writ Petition fails and is accordingly dismissed. However, there shall be no order as to costs.

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(D.K.K., A.C.J.)

(K.B., J.)

08.08.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation:Yes/No

pbn



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To

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and
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Pre-Delivery Order in
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