



W.P.No.25226 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2013

DELIVERED ON : 29.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.25226 of 2012 and

M.P.No.1 of 2012

1. Union of India,
rep. by the General Manager,
Southern Railway, Park Town,
Chennai.
2. The Divisional Railway Manager,
Madurai Division, Southern Railway,
Madurai.
3. The Sr. Divisional Personnel Officer,
Madurai Division, Southern Railway,
Madurai.

... Petitioners

Vs.

1. T.Philomin Doss
2. The Central Administrative Tribunal,
Madras Bench, Chennai.

... Respondents



W.P.No.25226 of 2012

WEB COPY

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari, calling for the records on the file of the second respondent in O.A.No.377/2010 dated 04.05.2012 and quash the same.

For petitioners : Mr.M.Vijay Anand,
Standing Counsel

For Respondents : Mr.N.R.Jasmine Padma
for Mr.L.Chandrakumar for first respondent

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This Writ Petition has been filed challenging the orders passed by the Tribunal in O.A.No.377/2010, dated 04.05.2012, in and by which, the impugned order, declining the request of the first respondent for stepping of his pay on par with his junior, passed the petitioners/ Railway Department was set aside and the Department was directed to step up of the pay of the first respondent with that of his junior A.Xavier and pensionary benefits paid to him.

Page 2 of 14



W.P.No.25226 of 2012

WEB COPY 2. The brief facts leading to the filing of the writ petition are as follows:

The first respondent was appointed on 13.05.1963 in the Railway Service, Mechanical Department. Thereafter, he was absorbed as a Ticket Collector on 16.07.1974 in Madurai Division in Southern Railway in the scale of pay Rs.260-400. After 35 years of service, his scale of pay carried as Rs.1600-2660 (revised as Rs.5500-9000 by the V Pay Commission; and Rs.9300-34800 + 42000 by the VI pay commission). Thereafter, he retired from service on superannuation on 28.02.1998 and his last pay drawn was Rs.6025/-; average emoluments Rs.5990/- ; and original pension was Rs.2995/-.

2.1. One Mr.A.Xavier was appointed on 30.09.1975 and regularised as ticket collector on 24.05.1979 and then he was promoted as Senior Ticket Collector/Travelling Ticket Examiner, carrying the scale of pay Rs.330-560 w.e.f. 03.09.1979. Thereafter, he was promoted as Travelling Ticket Inspector in the scale of pay Rs.425-640 w.e.f. 12.11.1984. Further, on implementing the recommendations by the IV Pay Commission, while he



W.P.No.25226 of 2012

was drawing basic pay of Rs.1600/- in the scale of pay Rs.1400-2300, he was promoted as Chief Travelling Ticket Inspector, carrying the scale of pay Rs.1600-2660. Later, he was further promoted as Chief Travelling Ticket Inspector in the scale of pay Rs.2000-3200 and his basic pay was fixed at Rs.2000/- w.e.f. 10.08.1994.

2.2. At the time of retirement of the first respondent on 28.02.1998, his Junior Mr.Xavier was drawing a basic pay of Rs.6900/- w.e.f. 01.08.1997 in the scale of pay Rs.6500-10500, on revision, based on the recommendations by the V Pay Commission. Therefore, the first respondent has given a representation on 12.11.2009 seeking stepping up of pay on par with his junior A.Xavier to the Department. However, it was rejected by the third petitioner herein, vide order dated 16.02.2009. As against the above said rejection order, the first respondent had filed O.A.No377/2010 before the Tribunal.

2.3. Before Tribunal, the third petitioner/Department has filed a reply statement stating that the first respondent was initially appointed as Khalasi



W.P.No.25226 of 2012

and subsequently, he was promoted as JC (Commercial Clerk) in scale of pay Rs.260-430 w.e.f. 18.7.1974 and thereafter promoted as Senior Ticket Collector in the scale of pay Rs.330-560 w.e.f. 9.4.1979; and then promoted as travelling ticket Inspector in the scale of pay Rs.1400-2300 w.e.f. 06.07.1987; and then Chief Travelling Ticket Inspector in the scale of pay Rs.1600-2600 w.e.f. 01.03.1993 and subsequently, he retired from service on 28.2.1998.

2.4. Mr.A.Xavier was appointed as Commercial Clerk on 30.09.1975 in the scale of pay Rs.260-430 and he was given with a higher start of pay at Rs.360/- in the above scale, on sports ground with the approval of the General Manager, Southern Railway. At that time, the first respondent was drawing a pay of Rs.266/-. Subsequently, Mr.A.Xavier was posted as Ticket Collector on 06.12.1977 in the scale of 260-400, on administrative ground and thereafter, promoted as senior ticket collector on pay Rs.380/- in the scale of pay Rs.330-560/- w.e.f. 3.9.1979, as per his seniority. Further, Mr.Xavier was given out of turn promotion from 12.11.1984 in the scale of pay Rs.425-640/ 1400-2300/-, which was given to the first respondent from



W.P.No.25226 of 2012

06.07.1987 only, as per his seniority. It is stated by the petitioners in the counter affidavit before Tribunal that Mr.A.Xavier became senior to the first respondent, since he was granted out of turn promotion in recognition of his sporting excellence and hence, the first respondent cannot claim stepping up of pay. Therefore, according to the petitioners, the first respondent was receiving lesser pay than Mr.A.Xavier and hence, his claim was rejected by the Department in a correct manner.

2.5. After hearing both sides and relying upon the decision of this Court in W.P.No.31172/2005, dated 06.09.2007, the Tribunal has allowed the original application. Now, the Department has filed the present writ petition challenging the above order of the Tribunal.

3. The learned counsel for the petitioners/Department submitted that, the first respondent joined in service as Khalasi in the year 1963 and subsequently, he got various promotions. He further submitted that, the first respondent got promotion to the post of Commercial Clerk in the pay scale of Rs.260-430 w.e.f. 18.07.1974 and his pay was fixed at Rs.266/-, as on



W.P.No.25226 of 2012

01.07.1975. Though Mr.A.Xavier was appointed as a Commercial Clerk on 30.09.1975 in the same scale of pay Rs.260-430, since he was appointed under sports quota, he has been given higher fixation of pay at Rs.360/-. Thereafter, Mr.A.Xavier was given out of turn promotion from 12.11.1984, and hence, the difference of pay between the first respondent and Mr.A.Xavier had been continued till 28.02.1998, on which date, the first respondent attained the age of superannuation. He further submitted that, the source of recruitment between the first respondent and Mr.A.Xavier was different and the first respondent has got promotion in the normal course, whereas, Mr.A.Xavier being a meritorious sports person, he was granted higher fixation of pay in his initial appointment and hence, in the subsequent promotion also, he got more pay than the first respondent.

4. The learned counsel for the first respondent mainly contended that, the first respondent was entered into service in the year 1963 itself and he got promotions at various levels and finally while he retired from service on 28.02.1998, he hold the post of Chief Travelling ticket Inspector. She further submitted that, the first respondent was promoted as Commercial



W.P.No.25226 of 2012

Clerk in the year 1974, whereas Mr.A.Xavier was appointed in the same post as Commercial Clerk and in the same scale of pay in the year 1975.

However, he got higher pay than the first respondent. Therefore, the Tribunal, after considering the fact that junior get more pay than the first respondent and also following the decision of the Hon'ble Supreme Court as well as this Court, has passed the reasoning order. As such, the petitioner is entitled for stepping up of pay on par with his junior.

5. Heard the learned counsel for the petitioners and the learned counsel for the first respondent and we have also perused the materials on record.

6. In an earlier occasion, this writ petition was dismissed by this court by order dated 28.07.2016. Against which, the Department has filed appeal in Diary No.23166/2017 before the Supreme Court. The Apex Court, vide order dated 21.08.2017, has ordered as follows.

Accordingly, we permit the petitioner-Union of India to move the High Court so that the High Court can take a fresh view in the matter without being influenced by the decision taken earlier. The High Court may hear the



W.P.No.25226 of 2012

respondent before passing any order.

WEB COPY

The special leave petition is accordingly disposed of.

We make it clear that we have not expressed any final opinion on the merits of the case."

Accordingly, this matter has been remanded back before us for fresh adjudication.

7 At the time of hearing, " Master Circular No.14 " issued by the Department was placed before this Court by the learned standing counsel appearing for the petitioners. In the above said circular, consolidated order was issued on the subjects, viz., recruitment and probation of sports person; quota for appointment of sportsmen; incentives to sports persons and etc. Further, in Sl.No.8 of the above said circular, it has been decided as follows

Master Circular No.14

[No. E(NG)II/82/RR 1/21 dated 27.09.1982]

8. Incentives to sportspersons for outstanding performance:

The Ministry of Railways, Railway Board have decided that the Railway Administration will have powers to fix the pay at the time of initial recruitment of outstanding sports persons with additional increments as follows:



W.P.No.25226 of 2012

a. Higher Initial Fixation of Pay:

Sl. No.	Grade	Fixation at initial recruitment
1	Rs.950-1500 (260-400)	Upto a maximum of Rs.1250 depending upon the calibre of the Sports persons (under General Manager's Powers)
2	Rs.1200-2040 (Old scale Rs.330-350) (Recruitment grade pay)	Upto a maximum of Rs.1530 depending upon the calibre of the Sports-persons (under general manager's Powers)

...

...

[No.E(NG) II/90/RR-3/3 dated 25.05.1990]

f. Out of Turn promotion: Ministry of Railways, (Railway Board) have also decided that out of turn promotion may be given to the truly outstanding performance of sports persons by the General Managers on the following criteria: -----

Group 'C' Sports persons who:

a. Represented the country in International meets;

OR

b.

c.

d.

e.

Note: These orders will remain in force upto 31.03.1991.

Therefore, from the above circular, it is clear that the Railway administration has powers i) to fix the pay with additional increments at the time of initial recruitment itself for the outstanding sports persons and ii) to give out of turn promotion to the outstanding performance of the sports



W.P.No.25226 of 2012

persons. Accordingly, the said Mr.A.Xavier was given higher start of pay as well as out of turn promotion and hence, he got more pay than the first respondent.

8. It is brought to the notice of this Court that this circular was not placed before the Tribunal. However, the learned counsel for the first respondent pointed out that the the relevant circulars, with regard to grant of higher initial fixation of pay and to grant out of turn promotion, were issued only in the years 1982 and 1990. But, the said Mr.T.Xavier was appointed on sports quota in the year 1975 itself and hence, these circulars will not apply to fix such higher fixation and other things in his case.

9. In reply to the same, the learned standing counsel submitted that, only by following the rules prevailing over that period, the fixation was done. However, the petitioners have not produced any relevant records prevailing during the period of appointment of Mr.T.Xavier i.e. in the year 1975. The circulars produced by the Department are subsequent to the appointment of Mr.T.Xavier, thereby, they failed to produce sufficient



W.P.No.25226 of 2012

document for fixation of higher pay to him. Therefore, in the absence of any relevant records, it is not appropriate for the petitioners seeking to set aside the orders passed by the Tribunal. The learned Tribunal, after analysing the materials on records, has passed the order and there is no infirmity in that order. Therefore, the order passed by the Tribunal does not warrant any interference by this Court and hence, the writ petition deserves to be dismissed.

10. Accordingly, this writ petition is dismissed and the impugned order passed by the Tribunal is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.) (P.D.B.J.)

29.01.2024

To

1. The Central Administrative Tribunal, Madras Bench, Chennai.
2. The General Manager, Union of India,
Southern Railway, Park Town, Chennai.
3. The Divisional Railway Manager,
Madurai Division, Southern Railway, Madurai.



W.P.No.25226 of 2012

4. The Sr. Divisional Personnel Officer,
Madurai Division, Southern Railway, Madurai.

WEB COPY