



WEB COPY



WP No.34337 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

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1.Union of India represented by

The Secretary,
Ministry of Labour and Employment,
Shram Shakti Bhawan,
2 & 4, Rafi Marg,
New Delhi-100 001.

2.The Director General/Joint Secretary,
Directorate General of Employment and Training,
Ministry of Labour and Employment,
Shram Shakti Bhawan,
2 & 4, Rafi Marg,
New Delhi- 100 001.

... Petitioners

versus

1.The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai-104.

2.P.Namasivayam

... Respondents

1/12



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari to call for the record of the first respondent in OA No.1254 of 2013 dated 03.01.2019 in allowing the OA filed by the second respondent and quash the same.

For the Petitioners :Mr.G.Babu
Central Government Senior Standing Counsel

For the Respondents :Mr.R.Ramesh
for second respondent
first respondent-Tribunal

ORDER

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

The writ petition is filed for the issuance of a writ of Certiorari to call for the records of the Central Administrative Tribunal in OA No.1254 of 2013 dated 03.01.2019 and quash the same.

2. Brief facts of the case

2.1. The second respondent herein entered the services of the second applicant as a direct recruit in the cadre of Training Officer on 08.08.1997 in the pay scale of Rs.2000- 3500/- vide order No.DGET.A.19019/2/97/TA-1.



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The post of Training Officer is filled up 50 % by direct recruitment and 50 % by promotion. Certain other posts such as STA/Surveyor/Group Instructor/Store Officer/Millwright Maintenance in the field Institutes/offices of DGE&T had the pay scale of Rs.2000- 3200/- till 31.12.1995. After the 5th Pay Commission, the pay scales of Rs.2000-75-3200 and 2000-3500 were merged and replaced by a common pay scale of Rs.6500-200-10500. As a result of the same, the pay scale of Rs.2000-3200 for the post of STA/Surveyor, etc. were merged with the promotional cadre of Training Officers in the pay of Rs.2000-3500 and the officers in the STA/Surveyor etc. category were granted the merged pay scale with effect from 01.01.1996 by order dated 15.10.1998.

2.2. According to the second respondent, on 09.12.2003, the petitioner Department fixed tentative seniority list in which the position of the second respondent was reflected at Sl.No.363 in the seniority list of Training Officers as on 31.10.2003. The officials were given opportunity to make objections for the said seniority list and thereafter, the petitioner Department fixed the final seniority list of training officers from Sl.No.214



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to 275. On 16.02.2009, the petitioner Department issued adhoc promotion for 22 Training Officers, which did not include the name of the second respondent herein. On 26.08.2009, the petitioner Department had issued tentative seniority list of Training Officers as on 31.07.2009 and once again objections and comments were called for. The second respondent submitted his representations on 09.12.2003, 08.09.2010 and a reminder dated 13.01.2011 to revise the seniority list of training officer and to offer the post of Assistant Director of Training on promotion. Thereafter, the second respondent herein again submitted a representation on 22.11.2012 to the petitioner Department for revision and correction of the seniority of Training Officer as on 31.01.2003. On 08.08.2011, the petitioner Department issued the seniority list of Training Officers as on 30.06.2011, wherein the seniority of juniors were shown over and above that of the second respondent. Thereafter, the petitioner Department issued order for appointment/promotion to the higher post of Assistant Director of Training in which all the juniors were promoted and the second respondent was left out due to alleged irregular seniority. Thereafter, the petitioner Department, by order dated 11.02.2013, rejected the said aforesaid representation dated



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22.11.2012 of the second respondent. Aggrieved over the impugned seniority list dated 21.05.2013 not assigning the correct seniority position to the second respondent in the post of Training Officer and rejection order of the petitioner Department dated 11.02.2013, the second respondent filed original application in OA No.1254 of 2013 before the Central Administrative Tribunal. The Tribunal, by order dated 03.01.2019, had allowed the said application with the following observations:

"15. In view of the above the impugned tentative seniority list is liable to be quashed and accordingly the same is quashed and the respondents are directed to revise the existing seniority list of Training officers and right the wrong by retaining all who had been appointed against the Direct Recruit quota as Training Officer till the decision took place for merger, i.e.30.09.1997 which alone is in accordance with law and extant instructions on the subject. And, accordingly the respondents shall consider the applicant for promotion to the post of Assistant Director of Training, if found eligible otherwise along with or immediately after those Training Officers who were promoted singling out the applicant. In the event of his being found fit and on promotion, his seniority in the higher grade would also be suitable fixed. The above exercise shall be completed within a period of four months from the date of pronouncement of this order"



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2.3. Challenging the said order, the petitioner Department has filed the present writ petition.

3. Learned Central Government Senior Standing Counsel appearing for the petitioner Department submits that the second respondent herein/applicant has approached the Tribunal belatedly and therefore, the said OA filed by the second respondent is hit by delay and laches. It is further submitted that since the tentative seniority lists have been continuously published by the petitioner Department from the year 2003 onwards, by merely making a representation at the belated stage to the petitioner's Department and after rejection order being passed by the Department on the said representations, an OA before the Tribunal has been filed. Therefore, the said OA filed by the second respondent herein is not maintainable on the ground of delay in approaching the Tribunal. It is also further submitted that 19 persons have already been promoted to the post of Assistant Director and they were not impleaded in the aforesaid proceedings before the Tribunal. Therefore, on the aforesaid ground also, the said OA ought to have been dismissed by the Tribunal.



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4. Learned Central Government Senior Standing Counsel further submitted that without taking into account the aforesaid statement made by the petitioner Department, the Tribunal by considering irrelevant materials pleaded by the second respondent, had allowed the said OA, which is contrary to law and accordingly, the same is unsustainable. Hence, he seeks to set aside the order passed by the Tribunal and allow the writ petition.

5. Learned counsel appearing for the second respondent has strongly objected to the said contention of the petitioner Department by stating that the petitioner Department has not finalized the seniority list drawn for the post of Training Officers fit for promotion to the post of Assistant Director. The petitioner Department has published only a tentative list and therefore the representation has been made by the second-respondent on 22.11.2012 to revise the said tentative seniority list and to place the second respondent herein in the appropriate place in the aforesaid seniority list as per the Office Memorandum in OM No.20020/4/2010-Estt.(D) dated 13.09.2012. Therefore, the contention of the petitioner Department that the said OA is hit by delay and laches is unsustainable as there is no delay on the part of



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the second respondent herein. On the contrary, the delay is only on the part of the petitioner Department in finalizing the seniority list. He further submits that all the tentative seniority lists published by the petitioner Department in the years 2003, 2009, 2011 and 2013 have been enclosed in the typed set of papers and on a perusal of the same, it would be clear that the petitioner Department has not so far published the final seniority list. Therefore, the said contention of the petitioner Department is liable to be rejected.

6. The second contention of the learned counsel for the second respondent is that the impugned rejection order passed by the petitioner Department without assigning any reasons whatsoever for such rejection is a cryptic and non speaking order and therefore liable for rejection.

7. Heard the parties and perused the materials available on record.

8. When the second respondent has relied upon the proceedings in Office Memorandum in OM No.20020/4/2010-Estt.(D) dated 13.09.2012,



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the action of the petitioner Department passing an order, without taking the said proceedings into account and simply rejecting the second respondent's representation dated 22.11.2012 does not stand good and therefore, the order passed by the petitioner Department is without any valid ground. Hence, we have no hesitation to accept the contention of the second respondent herein that if the said office memorandum has been strictly followed by the petitioner department, the second respondent would get the benefit of his seniority being fixed at the appropriate place. In such circumstances, the Tribunal has allowed the OA and directed the petitioner Department to revise the seniority list and quash the said tentative list. We are of the view that the direction of the Tribunal so far as it relates to quashing of the tentative seniority list is not sustainable. Therefore, in the light of the aforesaid submission made by the parties, we are inclined to modify the order of the Tribunal in OA No.1254 of 2013 dated 03.01.2019 to the following extent:

i) The order of the Tribunal in quashing the impugned rejection order dated 11.02.2013 passed by the petitioner Department is confirmed.



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ii) The order of the Tribunal insofar as it relates to the quashing of the impugned tentative list dated 21.05.2013 is concerned, is set aside.

iii) The petitioner Department is directed to consider the second respondent's representation dated 22.11.2012 for revising the seniority list and placing the second respondent herein in the appropriate place, in the light of the Office Memorandum proceedings in OM No.20020/4/2010-Estt.(D) dated 13.09.2012.

iv) The petitioner Department is also directed to publish the said tentative list, within a period of four weeks from the date of receipt of copy of this order.

v) Thereafter, four weeks time shall be granted to the concerned persons for submitting their objections, if any.

vi) Thereafter, the petitioner Department is directed to draw the final seniority list by considering the objections, if any, that would be made by any of the concerned persons, and publish the final seniority list, within a period of eight weeks thereafter.



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9. With the above directions, the order passed in OA No.1254 of 2013 dated 03.01.2019, is partly modified and the writ petition stands disposed of on the above terms. Consequently, WMP No.35002 of 2019 is closed.

[D.K.K., J.] [K.B., J.]
24.04.2024

Index : Yes/No
Neutral Citation : Yes/No
mrn

To
The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai-104.



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D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

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