



WP Nos.29478 and 29498 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

WP Nos.29478 and 29498 of 2017

Union of India
Represented by the General Manager
Heavy Vehicles Factory (HVF)
Avadi, Chennai-600 054.

: Petitioner in
WP Nos.29478 and 29498 of 2017

versus

1.The Central Administrative Tribunal
Represented by its Registrar,
Madras Bench
Chennai-600 104.

...First respondent in
WP Nos.29478 and 29498 of 2017

2.S.Ramachandran

....Second respondent in
WP No.29478 of 2017

3.C.Muthuraman

4.S.Govindan

...Respondents 3 and 4 in
WP No.29478 of 2017
Respondents 7 and 8 in
WP No.29498 of 2017



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5.P.Anbazhagan
6.A.Senthil Kumar

: Respondents 5 and 6 in
WP No.29478 of 2017
Respondents 9 and 10 in
WP No.29498 of 2017

7.C.Ponnuchamy
8.B.Raja
9.D.Ramesh
10.G.Thirunavukkarasu
11.D.Mohan

...Respondents 2 to 6 in
WP No.29498 of 2017

(R5 and R6 are impleaded vide
order dated 21.06.2019 made in
WMP No.37928/2018
in WP No.29478 of 2017 by
KKSJ and PTAJ)

PRAYER in WP No.29478 of 2017: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari, calling for the records of the first respondent pertaining to the impugned common order in OA No.40 of 2015 dated 16.03.2017 and quash the same.

PRAYER in WP No.29498 of 2017: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari, calling for the records of the first respondent pertaining to the impugned common order in OA No.39 of 2015 dated 16.03.2017 and quash the same.

For the Petitioners : Mr.A.R.L.Sundaresan
Additional Solicitor General
for Mr.B.Sudhirkumar
Senior Central Government Standing Counsel
For the Respondents: First respondent-Tribunal



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Mr.R.Rajesh Kumar
for second respondent in
WP No.29478 of 2017 and
for respondents 2 to 6 in
WP No.29498 of 2017

Ms.N.S.Tanvi
for respondents 5 and 6 in
WP No.29478 of 2017 and
for respondents 9 and 10 in
WP No.29498 of 2017

fourth respondent- No appearance
Not ready notice reg third respondent

COMMON ORDER

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

These writ petitions are filed challenging the common order passed by the Central Administrative Tribunal, Madras bench, in OA Nos 39 and 40 of 2015 dated 16.03.2017.

2. Brief facts of the case:

The private respondents 2 to 6 in WP No.29498 of 2017 and second respondent in WP No.29478 of 2017 have filed the Original Applications in OA Nos.39 and 40 of 2015 before the Central Administrative Tribunal. These private respondents were appointed as semi skilled employees in the



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petitioner Department. Subsequently, the seniority in the skilled trade was revised based on the Ordnance Factory Boards (OF Board) letter dated 24.12.2002. The revised seniority list was published on 01.01.2005 by the first appellant, due to which, the juniors to the private respondents, namely the respondents 7 and 8 in WP No.29498 of 2017/respondents 3 and 4 in WP No.29478 of 2017 were placed above these respondents in the seniority list. Aggrieved by the aforesaid revised seniority list, the private respondents herein had filed original applications in OA Nos.39 and 40 of 2015 before the Tribunal, challenging the aforesaid letter dated 24.12.2002 and for a direction to the appellant department to refix seniority of the private respondents on the basis of merit as it was prior to the alteration by the first appellant. The Tribunal, by a common order dated 16.03.2017 had allowed the original applications. Aggrieved by the said order, the appellant Department has filed the present writ petitions.

3. Learned counsel for the private respondents 2 to 6 in WP No.29498



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and second respondent in WP No.29478 of 2017 submits that due to the revised seniority list published by the petitioner Department, juniors were placed above the private respondents herein. The objection of the private respondents before the Tribunal was that the said revised seniority was placed on the OF Board letter dated 24.12.2002, from the date of promotion to skilled grade and not from the date of induction/entry/promotion in the semi skilled grade. Hence, the Tribunal has rightly allowed the original applications.

4. Learned Additional Solicitor General appearing for the petitioner Department drew the attention of this Court to the prayers in the Original Applications, wherein the private respondents herein has challenged the seniority list drawn on 01.01.2005. He further submits that admittedly, the said prayer as sought by the private respondents herein is not challenged within one year and therefore the said original applications are barred by limitation. He further submits that the said original applications are not maintainable in view of Section 21 of the Central Administrative Tribunal Act. The said Section reads as under:



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21.Limitation. (1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

b) in a case where an appeal or representation such as is mentioned in clause (b) of sub section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

5. At this juncture, learned counsel for the imploding respondents 9 and 10 in WP No.29498 of 2017 and respondents 5 and 6 in WP No.29478 of 2017 relied upon the two letters issued by the Department dated 17.08.2017. The first letter was addressed to OFB, Kolkota in No.2032/SNT/LB/OFBL, dated 17.08.2017, seeking clarification on seniority in various trades. The clarification sought for, in verbatim, reads as follows:

“In the Fitter General (Mech.) case, OFB vide letter No.Per/I/OFBL/2016 dated 17.02.2016 clarified that "since the necessary details and



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service records of all industrial Employees are available with the factory, factory is requested to take a considered decision keeping in view of the rules and regulations on the subject of seniority and the verdict of the Hon'ble CAT"

However, some employees contended referring IFB letter No.Per/I/Seniority/2015-2016 dated 04.08.2015 and No.Per/E/Seniority/2015-16 dated 07.01.2016 that the seniority should not be re-casted.

In this regard it is stated that,

(i) Representation as mentioned in para-1, were given by employees time & again.

(ii) Only those cases who are eligible as per foot note no.14 of SRO 18-E of 1989 & SRO-195 of 1994, are proposed to be considered for bringing them at par with juniors.

In view of above, OFB may kindly clarify whether above proposed action can be taken by the factory despite issue of letter No.Per/I/Seniority/2015-16 dated 04.08.2015 and No.Per/I/Seniority/2015-16 dated 07.01.2016.

or

In view of as above, following may be clarified for implementation at OFBL for seniority list up to 03.08.2015.

1.Whether OFBL should follow OFB letter No.Per/I/Seniority/2015-16 dated 04.08.2015 with SRO foot note no.14 for counting of seniority from the date of up gradation to skilled grade.

2.Whatever skilled grade IEs are there for seniority without following foot note no.14 of SRO"

6. The second letter was addressed to Ordnance Factory Bolangir in



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No.Per/1/OFOBL/2017 dated 17.08.2017, wherein clarification was given

with regard to seniority in various trade, as follows:

"This has reference to the above cited OFBOL letter. It is clarified that, the seniority of Industrial Employees will be counted from the semi-skilled grade without any linkage to skilled date w.e.f. 04.08.2015 in accordance with OFB letter No.Per/I/Seniority/2015-16 dated 04.08.2015.

Prior to issue of this letter, seniority of IEs should be counted from the date of skilled grade as per OFB letter No.590/OFBOL/A/I dated 24.12.2002 and not from the date of induction/entry/promotion in the semi skilled grade.

However, provisions contained in relevant SROs cannot be ignored at any time hence, Foot Note No.14 and other provisions contained in SRO 18E of 1989 and 185 of 1994 should be taken in to account whenever a junior employee is considered for selection for promotion and senior employee has completed probationary period.

It is further reiterated that if there is any discrepancy due to non-implementation of relevant SRO provisions, such seniority cannot be treated as settled seniority and necessary action should be taken by cadre controlling authority to remove the discrepancy as per rules."

7. Learned counsel for the impleading respondents 9 and 10 in WP



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No.29498 of 2017 and respondents 5 and 6 in WP No.29478 of 2017 informed the court that the said respondents also have filed original application in OA No.1391 of 2015 before the Tribunal seeking similar relief as sought for by the respondents 2 to 6 in WP No.29498 and second respondent in WP No.29478 of 2017. The Tribunal, by order dated 08.06.2018 has disposed of the said Original application with the following observations:

“In view of the submissions of the learned counsel for the respondents admitting parity of the applicant's vis-a-vis applicants in the said OAS 310/00039/2015 and 310/00040/2015, we direct the respondents to grant them appropriate reliefs on par with the said applicants by two months which shall be subject to the outcome of the writ petition preferred by the respondents before the High Court of Madras.

OA is disposed of accordingly. No order as to costs.”

8. Learned counsel for the impleading respondents further submitted that against the aforesaid order passed by the Tribunal, the Department has not filed appeal before this Court and in the said order, it is clarified that the appropriate reliefs shall be granted on par with the private respondents



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herein subject to the outcome of the order passed in the writ petition.

Therefore, learned counsel appearing for impleading respondents submitted that the decision taken in the present writ petitions will squarely bind on the impleading respondents.

9. Learned counsel for the impleading respondents also drew the attention of the Court by relying upon the prayer as sought for in the OA No.1391 of 2015, wherein the relief as sought for by the respondents 9 and 10 in the said OA was for implementing the circular dated 04.08.2005 issued by the petitioner Department and accordingly to revise the seniority list as per the seniority fixed for semi skilled grade on the basis of original merit list at the time of entry. According to them, based on the revised seniority list as per circular dated 04.08.2015 issued by the petitioner Department, they have filed OA No.1391 of 2015 before the Tribunal. Therefore, according to the impleading respondents, the said OA has been filed within the period of limitation under Section 21 of the Act. If the present writ petitions are disposed of on the ground of limitation, then the right of the impleading respondents will be adversely affected. Therefore, it is stated that the case of



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the impleading respondents has to be independently decided by the Tribunal, in view of the order dated 08.06.2018 passed by the Tribunal in OA No.1391 of 2015, granting relief to impleading respondents on par with private respondents in the present writ petition.

10. At this juncture, learned counsel for the private respondents herein has fairly agreed that the private respondents also relying upon on the aforesaid circular issued by the petitioner Department dated 04.08.2015 and the subsequent clarification issued on 17.08.2017. In the light of the aforesaid circular, all the similarly placed persons are entitled for the revised seniority list for the purpose of getting the other monetary benefits. Therefore, he submits that, even though he has not sought for the said prayer before the Tribunal within the time in the aforesaid applications Nos.39 and 40 of 2015, in the light of the subsequent clarification circular dated 17.08.2017, now he seeks that opportunity may be granted to agitate the matter before the Tribunal by placing all the relevant circulars once again with the aforesaid relief namely that the respondents herein are entitled for promotion on par with their juniors.



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11. Learned Additional Solicitor General submitted that if the order of the Tribunal impugned in the present writ petitions is set aside, then the issues raised by the petitioners whether the said circular dated 04.08.2015 issued by the petitioner Department followed by clarification dated 17.08.2017 will operate prospectively or otherwise will be left open to be decided by the Tribunal, after giving proper opportunity to all the parties concerned.

12. In view of the above submissions of the parties concerned, we are inclined to pass order as follows:

i) The order of the Tribunal dated 16.03.2017 in OA Nos.39 and 40 of 2015 is set aside and remitted back to the Tribunal to consider afresh and pass appropriate orders. In case, the private respondents 2 to 6 in WP No.29498 of 2017 and second respondent in WP No.29478 of 2017 file any application to amend the prayer in OA Nos.39 and 40 of 2015, the Tribunal shall permit the same.

ii) Since the Original Applications are of the year 2015, if both the



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parties rectify and file appropriate applications with amended prayer before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, the Tribunal shall consider the same and dispose the same at the earliest.

iii) Asfar as the other OA No.1391 of 2015 filed by impleading respondents 9 and 10 in WP No.29498 of 2018 and impleading respondents 5 and 6 in WP No.29478 of 2017 is concerned, it is open for the respondents to file a review application and the same shall be considered by the Tribunal. In such circumstances, the Department may not have any serious objection to allow the review application.

iv) The parties concerned shall file the review application within a period of four weeks from the date of receipt of a copy of this order in the original application filed by the impleaded respondents in OA No.1391 of 2015.

12. With the above directions, the writ petitions stand disposed of. There shall be no order as to costs. Consequently, WMP Nos.31774, 31775 and 31801 of 2017 are closed.



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

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Index : Yes/No

Neutral Citation : Yes/No

mrn

To

1.The Central Administrative Tribunal
Represented by its Registrar,
Madras Bench
Chennai-600 104.



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

(mrn)

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