

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: **13.03.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

AND

THE HONOURABLE MR.**JUSTICE M.V.MURALIDARAN**

W.P. Nos.23257, 23258 of 2015

W.P.No.23257 of 2015

- 1 S.Vijayalakshmi
- 2 Beulah Roy
- 3 R.Bhaskaran
- 4 Anuradha Ramesh
- 5 Sharadha Sundaraman
- 6 S.S.Vijayalakshmi
- 7 Lakshmi R.R.Narayan ... petitioners

versus

- 1 The Union of India rep. by
the Deputy Director Pay Commission V
Railway Board New Delhi
- 2 The General Manager
Southern Railway Park Town Chennai-3
- 3 The Financial Adviser &
Chief Accounts Officer Southern Railway
Park Town Chennai-3
- 4 The Chief Personnel Officer
Southern Railway Park Town Chennai-3

5 The Registrar
Central Administrative Tribunal Madras
Bench Chennai-104 ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the order of the 5th respondent/Tribunal made in O.A.No.384 of 2013 dated 11.03.2015 as dismissed in R.A.No.11 of 2015 dated 03.06.2015 to quash the same in so far as petitioners are concerned and to consequently direct the respondents 1 to 3 to grant financial upgradation to the petitioners in the post of Accounts Assistant w.e.f. the date of their eligibility viz. 09.08.1999 as per the Assured Career Progression Scheme (ACP Scheme) of Government of India dated 09.08.1999 with all other consequential benefits forthwith thereto.

W.P.No.23258 of 2015

1 R.Mangaleswaran
2 M.V.Devendran
3 M.Jeyachandran
4 Vasumathi Sampath Kumar
5 G.Ramesh
6 Sandhya Ramanan
7 Varalakshmi Sivakumar
8 S.Gunasekar
9 N.Dhelma
10 Sarasvathy Venkatarathinam
11 D.Alice Chandra
12 V.Rangarajan
13 R.Vijayakumar
14 Bathul Begum
15 D.Amuda Srinivasan
16 P.Selvanathan ... petitioners

versus

- 1 The Union of India
Rep. by the Deputy Director Pay Commission
V Railway Board New Delhi.
- 2 The General Manager
Southern Railway Park Town Chennai-3.
- 3 The Financial Advisor & Chief
Accounts Officer (Stores & Work Shop)
Southern Railway Perambur Chennai-23.
- 4 The Chief Personnel Officer
Southern Railway Park Town Chennai-3.
- 5 The Registrar
Central Administrative Tribunal Madras
Bench Chennai-104. ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the order of the 5th respondent/Tribunal made in O.A.No.383 of 2013 dated 11.03.2015 as dismissed in R.A.No.10 of 2015 dated 03.06.2015 to quash the same in so far as petitioners are concerned and to consequently direct the respondents 1 to 3 to grant financial upgradation to the petitioners in the post of Accounts Assistant w.e.f. the date of their eligibility viz. 09.08.1999 as per the Assured Career Progression Scheme (ACP Scheme) of Government of India dated 09.08.1999 with all other consequential benefits forthwith thereto.

For petitioner : Mr.L.Chandrakumar

For Respondents : Mr.v.Radhakrishnan, Senior counsel,
for Mr.V.G.Suresh Kumar, G.P. (Railways)
for respondents 1 to 4

COMMON ORDER

(made by K.K.SASIDHARAN, J.)

Introductory:-

The Madras Bench of the Central Administrative Tribunal on an earlier occasion allowed the original application filed by the employees of Southern Railway and held that their re-designation as Junior Accounts Assistant was not in the nature of promotion and as such, they are entitled to the grant of financial upgradation. The order was upheld by a Division Bench of this Court and thereafter by the Hon'ble Supreme Court of India. When the petitioners who are similarly situated approached the Central Administrative Tribunal, (hereinafter referred to as "the Tribunal"), to extend the benefits of the earlier order to them, the Tribunal took a U turn and negated their plea on the ground that the re-designation of the petitioners as Junior Accounts Assistant should be treated as promotion, notwithstanding the earlier finding to the contra. Feeling aggrieved by the dismissal of the original applications and the related review applications, the unsuccessful applicants are before us.

The facts:-

2. The petitioners made a claim for financial upgradation under ACP/MACP scheme on par with Thiru.V.Venkatraman, who earlier filed

original application and got the benefit. Though the petitioners are similarly situated, the Railway Board by order dated 29 February 2012, negated their plea on the ground that the order granted by the Tribunal in favour of Thiru.V.Venkatraman was personal and as such, the same could not be taken as the basis to grant similar relief to the other employees. The petitioners challenged the order dated 29 February 2012 before the Tribunal.

3. Before the Tribunal, the petitioners contended that they are similarly situated and as such, they are also entitled to the benefits of ACP scheme.

4. The Railway Board rejected the request made by the petitioners solely on the ground that earlier order was in relation to a particular employee and as such, the same cannot be applied in the case of others. No other reasons were given by the Railway Board to reject the claim made by the petitioners. However, the Tribunal supplemented certain fresh reasons and dismissed the original applications.

Submissions in brief:-

5. The learned counsel for the petitioners contended that in view of the order granting benefits of ACP to Thiru.V.Venkatraman, who is similarly

placed, the Tribunal was not correct in denying the benefits to the petitioners on a totally different ground. According to the learned counsel, in the earlier round of litigation, there was a clear finding that what was given was only upgradation and it was not a promotion. The petitioners are therefore entitled to the benefits of Assured Career Progression scheme.

6. The learned Senior counsel for the railway administration supported the order passed by the Tribunal. According to the learned Senior counsel, the Railway Board in its clarification dated 19 February 2012 very clearly indicated that when it involves creation of another grade in the hierarchy requiring framing of separate recruitment rules for upgraded posts, placement on existing incumbents to the extent of upgradations involved in the upgraded post will also be treated as promotion / upgradation. According to the learned counsel, this clarification was not produced before the Tribunal earlier and the same resulted in allowing the case of Thiru.Venkatraman. The learned senior counsel contended that what was given to the petitioners was only promotion and as such, they are not entitled to the benefits of ACP.

Discussion :-

7. The petitioners were all initially appointed as Clerk Grade II, which was subsequently re-designated as Junior Accounts Assistant with effect

from 1 April 1987. The petitioners were accommodated in the restructured scale of pay of Rs.1400-2600 as Accounts Assistant. The petitioners claimed the benefits extended by V Pay Commission consequent upon restructuring the scale of pay. While the claim of the petitioners were under consideration, Original Application in O.A.No.335 of 2007 was filed by Thiru.Venkatraman, a similarly situated employee, claiming the benefits of ACP. The Tribunal arrived at a clear finding that the applicant has been working in the cadre of Clerk Grade I and on account of re-structuring of posts, his pay scale was revised. The Tribunal was of the view that there was no promotion and as such, the applicant is entitled to the benefits of ACP. The finding rendered by the Tribunal that there was no promotion as such, and it was only revision of pay on account of restructuring of posts was challenged by the railway administration before the High Court in W.P.No.21112 of 2009.

8. The Division Bench of this Court considered the issue independently and held that there was no promotion. In fact, the Division Bench observed that the railway administration was not in a position to indicate the promotion post so as to deny the petitioners therein the benefit under the ACP scheme.

9. The order dated 19 October 2010 in W.P.No.21112 of 2009 was upheld by the Hon'ble Supreme Court by order dated 4 January 2012 in SLP(C) No.9422 of 2011.

10. The railway administration implemented the order in O.A.No.335 of 2007 by granting financial upgradation to Thiru.Venkataraman, the applicant therein. The issue with regard to the question raised by the railway administration as to whether the earlier revision of pay scale and upgradation were in the nature of promotion has therefore become final. In short, the finding recorded by the Tribunal that the restructuring of posts would not amount to promotion has become final.

11. The petitioners, taking inspiration from the order in O.A.No.355 of 2007, and the proceedings of the railway administration, implementing the said order, submitted representation requesting to grant them the very same relief. The request was rejected not on the ground that the petitioners are not entitled legally but on the ground that the relief granted to a particular employee cannot be the basis for granting similar benefits to other employees.

12. The petitioners challenged the order passed by the railway administration in O.A.Nos.383 and 384 of 2013. The Tribunal,

notwithstanding the earlier order, made an attempt to consider the matter afresh and without reference to the impugned order and ultimately dismissed the original applications.

13. The learned Senior counsel for the railways contended that the Railway Board has clarified the issue way back on 19 February 2012 and in the face of such clarification, the petitioners are not entitled to the relief claimed by them. There is no force in the said application. It was only after the clarification issued by the railways on 19 February 2002, the Tribunal decided the original application in O.A.No.335 of 2007. Even before the High Court, the so called clarification was not produced. The Railway administration now wanted this Court to confirm the order passed by the Tribunal on the basis of a clarification issued in 2002 which was not produced before any of the Tribunals or Courts earlier. The order passed by the Tribunal in the matter of Thiru.Venkatraman has attained finality. It is not the case of the railways that the petitioners are not similarly situated. In fact, the petitioners are all identically placed employees and they are entitled to the benefits of the order in O.A.No.335 of 2007. In view of the categorical finding given by the Tribunal in its order dated 26 August 2008 in O.A.No.335 of 2007 and the related order dated 19 October 2010 in W.P.No.21112 of 2009, there is absolutely no merit in the contentions taken by the railways. The finding recorded by the High Court earlier

cannot be ignored by placing reliance on a clarification given by the railways, which was not produced at any point of time before the Courts. Since the petitioners are identically placed, they are entitled to the benefits given to Thiru.Venkatraman, the petitioner in O.A.No.335 of 2007.

14. The Tribunal in the subject case dismissed the original applications not by interpreting the order impugned in the original applications but on the strength of the counter affidavit filed by the railway administration and the clarification issued on 19 February 2002. In short, the Tribunal passed orders by relying on materials found in the impugned order. In any case, the railways being an model employer is not expected to adopt different yard sticks or show different treatment to its employees. In case one of its employees got the benefit of an order by agitating the matter on merits, other similarly situated employees are entitled to the same treatment. This aspect was not considered by the Tribunal. We are therefore of the view that the impugned order is liable to be set aside.

15. In the result, the common order dated 11 March 2014 and the related order dated 3 June 2015 in review applications are set aside. The original applications in O.A.Nos.383 and 384 of 2013 on the file of the Madras Bench of Central Administrative Tribunal are allowed.

16. In the upshot, we allow the Writ Petitions. No costs.

(K.K.SASIDHARAN, J.) (M.V.MURALIDARAN, J.)

13 March 2017

Index: Yes/no
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