

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/01081/2018

Dated Thursday the 24th day of January Two Thousand Nineteen

CORAM: HON'BLE MR. R. RAMANUJAM, Member (A)

1. M.Devaraj,
2. N.P.Baskaran,
3. P.Veeraraghavan,
4. D.Annadurai,
5. K.Chandran,
6. R.Rengaramanujam,
7. R.Sarathy,
8. D.Rajini,
9. V.Raju,
- 10.M.G.Umamaheswaran,
11. V.Ganesan,
- 12.K.Mohan,
- 13.B.K.Bapuji,
- 14.N.Hariharan,
- 15.E.Deivasenathipathy.

....Applicants

By Advocate M/s. K. M. Ramesh

Vs

- 1.Union of India,
Chairman, Railway Board,
Railway Mantralaya,
New Delhi 110001.
- 2.The General Manager,
Southern Railway, Park Town,
Chennai 600003.
- 3.The Principal Chief Personnel Officer,
Southern Railway,
Park Town, Chennai 600003.
- 4.Senior Divisional Personnel Officer,

Southern Railway,
Chennai Division,
Park Town, Chennai 600003.

5.Chief Commercial Manager,
Southern Railway, Park Town,
Chennai 600003.

6.Chief Electrical Work Shop Engineer,
Carriage Works,
Southern Railway, Chennai 600023.

7.Senior Divisional Personnel Officer,
Southern Railway, Trivandrum,

8.Chief Workshop Manager,
Carriage Works,
Southern Railway, Perambur, Chennai 23.

9.Chief Workshop Manager,
Loco Works, Southern Railway,
Perambur, Chennai 23.

10.Financial Controller & Chief Accounts Officer,
Southern Railway,
Perambur, Chennai 23.

....Respondents

By Advocate Mr. K. Vijayaraghavan

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member(A))

Heard. The applicant has filed this OA seeking the following relief :

"To set aside the impugned order issued by the 3rd respondent bearing No. P(S)353/III/SCB/OA 1861/17/MAS dated 28.02.2018 rejecting the claim of the applicants to count their service from their initial engagement as temporary vendors for the purpose of reckoning the total service for the calculation of retiral benefits namely, gratuity and pension within a time frame and pass such other order or direction as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice."

2. The grievance of the applicants is that their representation for counting of their services as Commission Bearers for the purpose of pension and other service benefits to the extent of 50 percent allowed to similarly placed employees in OA 440/2003 by the Ernakulam Bench of the Tribunal and confirmed by the Hon'ble High Court of Kerala in WP (C) No. 15756/2006 dt. 20.03.2009 and similar orders passed in OAs 359 & 360/2011 dt. 24.08.2012 and upheld by the Hon'ble Madras High Court in WPs no. 10422, 19677, 26347 & 26457/2013 by order dt. 30.09.2013 had been rejected by Annexure A7 impugned order dt. 28.02.2018.

3. Learned counsel for applicant would submit that once relief had been granted by the competent courts in respect of similarly placed persons, the applicant's claim could not be rejected by treating the orders of the courts to be in personam. There was nothing peculiar about the facts of the cases relied upon that was exclusive to the applicants therein. It was on a point of law that the matter was decided in favour of similarly placed persons in the aforesaid cases.

As such, unless the point of law was reversed by the Hon'ble Apex Court, the same would be binding on the respondents. There is no evidence of the respondents having taken up the matter in the Hon'ble Apex Court, except in one case where the SLP(C) No. 17417/2010 filed by them was dismissed on the ground of delay.

4. The impugned order rejects the claim of the applicants only on the ground that Court orders were implemented under the threat of contempt proceedings and, therefore, could not have applicability to the applicants' case. This is not a valid argument to reject the applicants' claim, it is contended.

5. Notice was issued to the respondents following which a memo of appearance was filed by the learned counsel for respondents on 28.09.2018. However, no reply has been filed till date.

6. On perusal, it is seen that the applicant has relied upon the orders passed by this Tribunal in OAs 359 & 360/2011 dt. 24.08.2012 whereby Commission Bearers ventures were allowed to count 50% of their past services in catering establishment along with their Railway services till their retirement for the determining the qualifying service for pension. The orders relied on the order passed by the Ernakulam Bench of this Tribunal in OA 440/2003 and upheld by the Hon'ble Kerala High Court in WP(C) no. 15756/2006 dt. 20.03.2009. The SLP(C) No. 17417/2010 filed by the respondents in the Hon'ble Apex Court had been dismissed on the ground of delay.

7. The respondents had taken up the matter in a WP before the Hon'ble Madras High Court in WPs No. 10422, 19677, 26347 & 26457/2013 which were dismissed by the Hon'ble Madras High Court on 30.09.2013. As such, the respondents are left with no alternative but to give effect to the order of the court in respect of all similarly placed persons unless the law stood reversed by the Hon'ble Apex Court.

8. It is clear that the impugned order rejects the claim of the applicants only on the ground that the court orders in the relevant cases had been complied with in personam in respect of the applicants concerned because of compelling situation arising out of contempt proceedings. I am inclined to agree with the argument of the learned counsel for applicant that this is not a valid ground for rejecting the claim of the applicant as the orders of the court were not based on anything peculiar or exclusive to the applicants therein in terms of the facts of the case.

9. Hon'ble Madras High Court had made the following observations in the WPs cited supra :-

"...

6. DISCUSSION:-

It is not in dispute that the decision rendered by the Co-ordinate Bench at Kerala has become final. It is also not in dispute that the said decision has been given effect to. The further fact that the private respondents herein are also identically placed like that of the applicants in those cases is also not in dispute. It is no doubt true that a dismissal of a Special Leave Petition would not amount to a final approval of the Honourable Apex Court, however, in the case on hand, we are concerned with the element of fairness to be adopted by the petitioners between the same group of employees. The petitioners being model employers, cannot confer benefits only to their similarly placed employees as against the private respondents. Right to treat equally placed persons similarly is a guaranteed right under Article 14 of the Constitution of India. When two Forums

have considered the scope and applicability of relevant Rules on the earlier occasion, we do not want to disturb the said reasoning at this point of time. In that view of the matter, we do not find any error in the orders passed by the Central Administrative Tribunal as it was bound to follow the ratio laid down by its Co-ordinate Bench as confirmed by the Honourable High Court of Kerala. Therefore, we do not find any merit in all these writ petitions. Accordingly, they are dismissed. No order as to costs. Consequently, connected miscellaneous petitions are also dismissed."

10. In view of the above, Annexure A7 impugned order dt. 28.02.2018 is quashed and set aside. The respondents are directed to reconsider the representation of the applicants in the light of the aforesaid observations and pass fresh orders similar to those issued in favour of the applicants in the aforesaid cases, unless there are facts to distinguish the case of the applicants within a period of two months from the date of receipt of a copy of this order.

11. OA is disposed of.

(R. Ramanujam)
Member(A)
24.01.2019

SKSI