

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/01681/2013

Dated Friday the 3rd day of August Two Thousand Eighteen

PRESENT

**HON'BLE MR. R. RAMANUJAM, Member (A)
&
HON'BLE MR. P. MADHAVAN, Member (J)**

P.Gangadharan,
S/o Kunchiraman,
Residing at Ancharkandy House,
Chalakkara Post, New Mahe.Applicant

By Advocate M/s. Giridhar & Sai

Vs

1. Director General of Police,
Police Department,
Police Headquarters,
Puducherry, rep by Union of India.
2. Superintendent of Police (HQ),
Police Department,
Police Headquarters, Puducherry.Respondents

By Advocate Ms. S. Devie for Mr. R. Syed Mustafa

ORAL ORDER

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

Heard. The applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"i. To direct the respondents to fix the pay of the applicant in the post of Driver Grade II carrying the pay scale of Rs. 4000-6000 w.e.f 07.01.2004 with annual increments and by granting the grade pay of Rs. 2400/- w.e.f 01.01.2006 with arrears of pay and allowances and all other consequential benefits with interest at a rate of 18% p.a.

ii. To award costs, and pass such further and other orders as may be deemed and proper and thus render justice."

2. It is submitted that the applicant who was working in Mahe as Driver Grade-3 was promoted to Grade-2 on regular basis by Annexure A9 order dt. 09.01.2004. The applicant accepted the promotion and joined the Motor Training Unit at Puducherry as Grade-2 Driver on the forenoon of 18.01.2004. Subsequently, the applicant was orally instructed to continue doing duty at Mahe which he complied with. As the benefit of promotion in the pay scale of Rs. 4000-100-6000 plus usual allowances as approved in the promotion order dt. 09.01.2004 was not granted to him, the applicant made Annexure A11 representation dt. 19.08.2007 seeking refixation of pay. It was stated in the representation that the applicant performed duty as Grade-2 Driver at Puducherry for four days and thereafter, he was sent to Mahe on duty due to shortage of drivers in the Mahe region. The applicant reported at Mahe on 22.01.2004 and was working there ever since. The applicant also referred to two representations made earlier

on 17.01.2007 and 27.07.2007 wherein he had allegedly made a similar request. The applicant made a further representation dt. 18.06.2009.

3. Attention is drawn to Annexure A16 office order dt. 14.09.2009 fixing the pay of the applicant in the pay scale of Rs. 4000-100-6000 w.e.f. 09.01.2004. The grievance of the applicant is that though the order fixing his pay in the higher pay was issued, the applicant was never granted the benefit of pay in pursuance thereof. Aggrieved by the inaction of the respondents in this regard, he has filed this OA.

4. The respondents have filed the reply contesting the claim of the applicant. It is submitted that although the applicant reported for duty at Puducherry on 18.01.2004 on being promoted to Driver Grade-2, before issuing posting and pay fixation orders, he went back to Mahe and continued attending to his duties at Mahe region without any orders of the senior officials of his department. He was not relieved of his lower post at Mahe and no last pay certificate was issued to him. Accordingly, he continued to draw pay on his lower post of Driver Grade-3 which was tantamount to his non-acceptance of the promotion. As a matter of fact, the respondents are contemplating initiation of disciplinary proceedings against the applicant for having reported for duty at Puducherry without a relieving order from Mahe and going back to Mahe without informing anyone and continuing to

work at Mahe without formally declining the promotion. The applicant wanted the benefits of promotion without suffering any dislocation which was not possible. The post of Driver Grade-2 was not available in Mahe and, therefore, the pay and allowances due to a Grade-2 driver could not be drawn in favour of the applicant at Mahe where he is working without any authority or orders from the competent authority. It is also submitted that grant of ACP/MACP benefit to the applicant was under process and would be issued shortly. Even though the promotion was not effected in favour of the applicant, a pay scale equal to that of the higher post could be granted through ACP/MACP with retrospective effect after completion of the requisite period of service.

5. After hearing the counsel on both sides and carefully perusing the documents, it would appear that the applicant though promoted in the year 2004 to Grade-2 post at Puducherry continued to work in Mahe after briefly reporting for duty at Puducherry. While the respondents would allege that the applicant is working in Mahe without any authority, it is not clear why no action was taken against the applicant for deserting his job at Puducherry and how he was accepted back at Mahe. It is stated that departmental action is contemplated against the applicant. But we are unable to see why the department would still only be contemplating action for 14 years, but

not take any action against the applicant as yet. It is also seen that the respondents issued a pay fixation order in favour of the applicant by Annexure A16 order dt. 14.09.2009. If the applicant had not continued to be in Puducherry, it is not clear how such an order could have been issued.

6. The above facts lead us to the inescapable conclusion that the applicant is continuing at Mahe with the tacit consent of the authorities who, however, are reluctant to grant him the benefits of pay scale, perhaps fearing audit objections. It is not for this Tribunal to come to the rescue of the respondents if they have deliberately acted in violation of the rules and established principles of promotion/posting/transfer. On the other hand, if the applicant could be accommodated at Mahe as a Grade-2 driver by transferring the post from Puducherry to Mahe in exchange of the Grade 3 post therefrom, it is for the respondents to pass such an order w.e.f. an appropriate date provided no junior of the applicant had been promoted to Grade 2 at Puducherry, treating the absence of the applicant as defacto refusal of promotion in 2004. Instead of examining the matter with a view to regularising the arrangement or proceeding against the officials with whose tacit consent this had been possible, it is strange that the respondents would threaten the applicant with disciplinary action after 14 years. In the same breath it is also stated that ACP/MACP benefits

are being granted to the applicant. As the allegedly irregular arrangement has continued for far too long and there is no real dispute between the parties, we do not propose to substitute ourselves for the competent authority to decide what needs to be done. In our view, this is not a fit case for interference by this Tribunal.

7. OA is disposed of with the above observations. No costs.

(P. Madhavan)
Member(J)

(R.Ramanujam)
Member(A)

03.08.2018

SKSI