

THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 16371 of 2003

Order:

Questioning the impugned order dated 16.04.2003, passed by the 2nd respondent, wherein it was directed to re-fix the pay of the petitioner after withdrawing the Special Grade and Grade-I benefits and to effect recovery of excess amount paid to him, the petitioner filed the present writ petition.

The petitioner was appointed as a Conductor in the respondents-Corporation on 01.04.1978. Subsequently, he was given stagnation increments and promotion as Special Grade-I Conductor by reckoning his seniority with effect from 01.04.1978. The grievance of the petitioner is that the 2nd respondent, namely the Regional Manager, without giving any notice and reasonable opportunity, all of a sudden, passed the impugned orders directing to re-fix his pay after withdrawing the Special Grade and Grade-I benefits and to effect recovery of excess amount paid to him, which is illegal and arbitrary. Hence, he filed the present writ petition.

Learned counsel for the petitioner contends that the respondents-APSRTC, having given the stagnation increments and promotion as Special Grade-I Conductor by reckoning the seniority of the petitioner with effect from 01.04.1978, are not entitled to pass the impugned orders nearly after lapse of 18 years, that too without giving any notice and reasonable opportunity to the petitioner. In support of his contention he relied on decisions reported in *Pranab Mukherjee v. Union of India*¹, and *K.P. Sudhakaran v. State of Kerala*².

The respondents-APSRTC filed their counter affidavit. Learned

Standing Counsel for the respondents-APSRTC reiterating the counter averments submits that earlier the petitioner was removed from service on certain cash and ticket irregularities and reinstated by proceedings dated 27.04.1985 on condition that his seniority in the post of Conductor would be reckoned from the date of his reporting to duty. He further submits that the petitioner reported to duty on 13.05.1985, and therefore, his seniority has to be reckoned with effect from 13.05.1985. But, by mistake, taking the date of his initial appointment into service i.e., 01.04.1978, instead of 13.05.1985, the petitioner was granted special grade benefits with effect from 01.05.1990 and he was also granted promotion to Grade-I Post with effect from 01.07.1992. Realizing the said mistake, the impugned order was passed by the 2nd respondent directing to re-fix the pay of the petitioner duly withdrawing the Special Grade and Grade-I benefits and to effect recovery of excess amount paid to him, and, no interference is called for therewith. He, thus, prays to dismiss the writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

A perusal of the record would show that earlier the petitioner was removed from service, by order dated 09.01.1985, on certain cash and ticket irregularities. On appeal filed by the petitioner, he was ordered to be reinstated by proceedings dated 27.04.1985 on condition that his seniority in the post of Conductor would be reckoned from the date of his reporting to duty. By virtue of this order, the petitioner has lost the benefit of the past service. As the petitioner in pursuance of the proceedings dated 27.04.1985, reported to duty on 13.05.1985, his seniority has to be reckoned with effect from 13.05.1985 and not from 01.04.1978. But, by mistake, the respondents in stead of taking 13.05.1985, on which date he

re-joined duty, have taken the date of his initial appointment into service i.e., 01.04.1978, and granted special grade benefits with effect from 01.05.1990 and promotion to Grade-I Post with effect from 01.07.1992. Subsequently, after noticing the said mistake, the 2nd respondent passed the impugned proceedings directing to re-fix the pay of the petitioner duly withdrawing the special grade and Grade-I benefits and to effect recovery of excess amount paid to him. As the petitioner, by mistake was granted the special grade benefits and promotion to Grade-I post, without taking into consideration that his seniority has to be reckoned from the date of his reporting to duty by virtue of the orders of reinstatement passed by the Divisional Manager, no exception can be taken to the action taken by the 2nd respondent in issuing the impugned proceedings, directing to re-fix the pay of the petitioner after withdrawing the special grade and Grade-I benefits and to effect recovery of excess amount paid to him.

The writ petition is devoid of merits and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

N.V. RAMANA, J.

Date: 31st August, 2006
KSR

¹ 1989 (5) SLR 517(A)

² (2006) 5 SCC 386