

**Central Administrative Tribunal
Hyderabad Bench
Hyderabad**

OA No.021/773/2018

Date of C.A.V.: 22.01.2020

Date of pronouncement: 24 .01.2020

**Hon'ble Shri Ashish Kalia, Member (J)
Hon'ble Mr. B. V. Sudhakar, Member (A)**

R.F. Roberts, S/o W.Roberts, age 57 Group C
Chief Commercial Inspector S.C.Rly.
Plot No.86, RBI Colony, Bhoodevi Nagar
Alwal, Secunderabad – 500 015. Applicant(s)

(By Advocate: Mr. P. Ramachander Rao)

Vs.

1. Union of India,
South Central Railway
Rep. by its General Manager
3rd Floor, Rail Nilayam
Secunderabad – 500 071.
2. Senior Divisional Personnel Officer
Secunderabad Division, S.C.Railway
IV Floor, Sanchalan Bhavan
Secunderabad – 500 071.
3. Senior Divisional Commercial Manager
Secunderabad Division, S.C.Railway
Ist Floor, Sanchalan Bhavan
Secunderabad – 500 071. ... Respondent(s)

(By Advocate: Mrs. Vijaya Sagi, SC for Railways)



ORDER

By Mr. B. V. Sudhakar, Member (A)

2. The OA is filed aggrieved by the action of the 2nd Respondent vide his letter dated 25.07.2018, denying promotion to the applicant as Commercial Supervisor on par with his juniors.

3. Brief facts of the case are that applicant was selected as Probationary Assistant Station Master, through Railway Service Commission, South Central Railway and was posted at Secunderabad and also sent for training from 20.08.1982 to 09.02.1983 and thereafter he was posted at Guntakal Division and he reported for duty as ASM on 21.03.1983. On a request made by the applicant for inter Divisional Mutual transfer to Secunderabad Division, he was posted at the requested place vide order dated 09.05.1984 and accordingly he reported for duty on 29.05.1984. Applicant was promoted as Station Master-II vide order dated 19.04.1985 and accordingly he assumed the charge in the promotional grade on 20.04.1985. On 28.12.1985, applicant was medically decategorized for A-II and found fit for B-I and below. On 12.03.1986, subsequent to the medical de-categorization, he was given alternative appointment as HBC, which is equivalent scale of the post of SM-II. On an RTI application filed by the applicant, seeking information of his service and leave record, vide letter dated 05.01.2018,

and on getting permission, on 04.04.2018 verified his service record and found that his increments were correctly drawn right from his appointment upto 01.04.1990. However, he was imposed with a penalty of withholding of increments for a period of one year on 03.07.1990. The appellate authority, on 03.08.1990, had reduced the penalty from withholding of increment for a period of one year to that of six months. It is stated that increment for the year 1991, was drawn on 01.10.1991, after completion of the penalty with suitable remarks. Instead of drawing the regular increment on 01.04.1992, the same was drawn on 01.10.1992, and further continued upto 6th CPC which resulted in forgoing the benefit of one additional increment for the employees whose increment fell between February-June. Applicant's basic pay, instead of fixing it as Rs.17690 on 01.01.2006 in the Pay Band of Rs.9300-34800, it was fixed at Rs.17410 in the same Pay Band. This has resulted in less fixation of his pay in the 7th CPC also. It is stated that as all the penalties which were imposed on him were only Non-cumulative, as such, he is eligible to get Commercial Supervisor in the scale of Rs.5500-9000 along with his juniors, who were promoted as Commercial Supervisors on 11.05.2005, ignoring the claim of the applicant.

4. In view of the aforesaid circumstances, the applicant's main contention is that if the aforesaid promotion is also added to his service,

the fixation benefit in 6th CPC on completion of the penalty imposed would be more than what is fixed already, which will have effect on 7th CPC fixation also. Therefore, denying the promotion as Commercial Supervisor w.e.f. 11.05.2005 [i.e. the date on which the junior of the applicant was promoted in the scale of Rs.5500-9000], vide impugned order dated 25.07.2018, is arbitrary, illegal, unconstitutional and gross violation of Articles 14, 16 and 21 of the Constitution of India. Hence, the OA.

5. Respondents, in their reply, while not disputing the facts mentioned above upto his absorption as Head Booking Clerk on 17.3.1986, they have categorically stated that the applicant could not be promoted to the post of Commercial Supervisor on par with his juniors, in view of the multiple penalties imposed on the applicant, as mentioned in their reply statement at para 3(b). Respondents further stated that the applicant's pay was restored after completion of above penalties on 01.04.2008. On a representation filed by the applicant on 24.04.2018, the implementation of the above penalties have been re-examined and his pay has been revised. Accordingly, his pay was restored w.e.f. 01.04.2006 after completion of above penalties. Respondents relied on the Serial Circular No.165/2005, wherein it was clarified that "the penalty of withholding of increments or reduction to lower stage in the time scale

of pay on a railway servant does not stand in the way of his consideration for promotion.” It is further stated that such a railway servant should also be considered for promotion by the Departmental Promotion Committee which meets after the imposition of the said penalty and after due consideration of full facts leading to imposition of the penalty, if he is still considered fit for promotion, the promotion may be given but only after expiry of the currency of the penalty, even if a person junior to him in the panel was promoted earlier, it will have no bearing on the pay to be allowed on promotion to the employee on whom a penalty was imposed and accordingly, there is no stepping up of his pay with reference to his junior also. However, the applicant was granted 2nd and 3rd financial upgradations under MACP w.e.f. 01.09.2008 and 02.07.2013 respectively. Respondents further stated that the applicant has been paid arrears of refixation of pay sought by him in Para VIII(b) of main relief and the rest of the reliefs cannot be granted by this Tribunal because of the reasons of penalties imposed upon the applicant, which were mentioned hereinbefore. Further, they have also taken preliminary objections of limitation, non-joinder of necessary parties, etc.. Hence, according to them, the OA is liable to be dismissed.

In the rejoinder filed by the applicant, while reiterating his pleas already taken in the OA, relied upon the Judgement of the Hon'ble Principal Bench of this Tribunal in OA No.688/2014 [**Raj Pal v. MTNL & others, decided on 28.04.2015**] and stated that as per DoPT OM dated 14.09.1992, on conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Government servant, the sealed cover or covers shall be opened and in case the Government servant is completely exonerated the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. Further, it is stated that on such promotion, if necessary, by reverting the junior most officiating person and accordingly promote him notionally with reference to the date of promotion of his junior.

6. Heard both the learned counsel and perused the pleadings on record.

7. (I) In the present case, it is an admitted fact that the applicant was not promoted to the post of Commercial Supervisor along with his juniors due to currency of penalties imposed upon him upto 01.04.2006. Juniors of the applicant were promoted on 11.05.2005. Further, it needs also to be noted that it is not the case of the applicant that any of the

juniors to him were promoted after the currency of punishment imposed on the applicant is over.

(II) The aforesaid DoPT Circular dated 14.09.1992 would apply in cases of dropping of allegations against the Government servant and complete exoneration of the charges. In the present case, he was continuously under the currency of penalties till 01.04.2006. Therefore, the question that falls for consideration in this case is whether the applicant's case can be considered for grant of promotion as sought by him. In our opinion, in view of the facts and circumstances of this case, the answer is negative.

(III) In **Raj Mal case** (supra), it is noticed that the applicant therein was exonerated in the criminal proceedings as well as in departmental proceedings but in the present case, the applicant was under currency of penalties till 01.04.2006, i.e., after promotion of his juniors. Therefore, the facts and circumstances of Raj Mal (supra) are totally different and accordingly the said case would not come to the rescue of the applicant.

(IV) Further, on a representation made by the applicant, even in the year 2018, after a lapse of 13 years, the respondents, on making a detailed examination of his case from the facts available with them, passed the impugned order and further he has been granted 2nd and 3rd financial upgradations under MACP Scheme, and paid the arrears, after re-fixing his pay and also paid the arrears as sought in the relief VIII(b)

of the OA. Therefore, the OA is devoid of merit and accordingly the same is dismissed with no order as to costs.

(B. V. Sudhakar)
Member (A)

(Ashish Kalia)
Member (J)

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