

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**

Original Application No. 434/2013

CORAM :

Hon'ble Shri Mohd. Jamshed, Member (Administrative)

Hon'ble Shri M.C.Verma, Member (Judicial)

Date of Reserve : 27.02.2020

Date of Order : 02.06.2020

Jayvant Rao B. Borse S/o Sh. Baburao Borse, aged 60 years, working as Ex. Welder-I, Office of Mechanical, Resident of Hanuman Pole, Wadi, Vadodara – 007. **.....Applicant**

[By Advocate : Ms. S.S.Chaturvedi]

Versus

1. Union of India notice to be served through General Manager, Western Railway, Churchgate, Mumbai -400 020.
2. Divisional Railway Manager (E), Western Railway, Pratapnagar, Baroda – 390 004. **.....Respondents**

[By Advocate : Ms.A.B.Makwana]

O R D E R

[Per M.C.Verma, Member Judicial]

1. Applicant, an retired employee of the respondent has preferred instant O.A. for quashing of his PPO (Annex.'A') and order dated 09.04.2013 Annex. A/1) whereby re-fixation of his pay, due to LWP case, was done and has prayed to direct the respondent to issue fresh PPO with Pay Scale of post of MCF with all consequential benefits.

2. The grievance of the applicant is that he, vide promotion order dated 09.12.2009 (Annex.A/2) was promoted from the post of Welder Grade-1 to the post of MCF but, till his superannuation, which took place on 31.05.2013 he was not allowed benefit and pay scale of said post of MCF and that in his PPO (Annex.A/1), issued by the respondent, retiral dues has been given & pension has been fixed as per pay scale of Welder Grade-1.

3. Crux of relevant facts, as has been set out by the applicant in his O.A., in brief, are that he was working as Welder Grade-III since 1982

and on 06.02.1990 he was promoted as Welder Grade-II and thereafter was further promoted as Welder Grade-I, on 05.01.1995. That vide promotion order dated 09.12.2009 (Annex.A/2) he was promoted from the post of Welder Grade-I to the post of MCF, in the pay scale of Rs. 9300-34800+4200 Grade Pay but timely he was not relieved and was never given the benefits of post of MCF and on attaining the age of superannuation was retired on 31.05.2013. That respondents released his retiral benefits treating his last pay as that of Welder Grade-I and finalised the pension accordingly. Applicant disclosed in his pleading that before retirement minor penalty Charge-sheet (SF/11 dated 22.04.2009) was issued and punishment of stoppage of one privilege pass was inflicted vide order Annex. A/4 (Order dated 16.06.2009) and that another minor penalty charge-sheet was issued and punishment of stoppage of one set of PTO was inflicted vide order Annex. A/5 (Order dated 17.04.2012). That his pay fixation was done by the Department on 09.04.2013, vide Annex. A/1 and based upon this pay fixation as per pay scale of Welder-I, his final settlement dues along with pension were released. That he did file objection, vide representation dated 01.07.2013 (Annex.A/3) against re-fixation of pay as per pay scale of Welder-I and for non giving of benefit of promotion to the post of MCF.

4. Respondents have filed their reply admitting issuance of promotion order of applicant and explaining that promotion of an employee is always subject to that he is not undergoing any penalty. Applicant is responsible for his misfortune, he was never sincere to his job, often used to remain absent un-authorisedly and that when his promotion order was issued he was undergoing the penalty so following instructions issued by Railway Board, from time to time he was not relieved on promotion. In Para 4 of the reply respondents have given the details of penalties, which applicant

was undergoing and which were in operation at the time of his promotion and same are reproduced herein below:-

“(a) Stoppage of increment for 1 year without future effect vide NIP dated 13.01.2004.

(b) Stoppage of increment for 3 years without future effect vide NIP dated 01.10.2004.

(c) Stoppage of increment for 3 years without future effect vide NIP dated 24.11.2004.”

4.1 Respondents has pleaded that at the time when applicant was promoted as MCF, two minor penalties imposed upon him were in operation viz. (i) stoppage of increment for one year without future effect vide NIP dated 13.01.2004 during 01.07.2005 to 30.06.2006 and (ii) stoppage of increment for three years without future effect vide NIP dated 01.10.2004 w.e.f. 01.07.2007 and prior to completion of said penalty applicant was awarded another penalty of reduction at lowest stage at Rs. 4,500/- for two years with future effect, vide NIP dated 02.12.2007 which had been implemented from 27.12.2007 to 26.12.2009.

4.2 That in view of this penalty dated 02.12.2007 of reduction at lowest stage, rest penalties imposed on 01.10.2004 were implemented from 27.12.2009 to 26.05.2012 and therefore his pay, on completion of all penalty, was restored only on 27.05.2012 at Rs.14,510/-. That apart from it, stoppage of increment for 3 years without future effect, vide NIP dated 24.11.2004 had to be implemented from 01.07.2012 but could not be completed due to applicant's retirement on 31.05.2013 and applicant thus was not promoted as MCF due to multiple penalties. That applicant never came out of shadow of penalties till his retirement hence; the promotion order issued could not be affected till date of his retirement.

4.3 It has also been pleaded by respondents that applicant has suppressed the material facts of inflicting of penalty and undergoing of punishment of withholding of increment, reduction in same time

scale or major/B&C case is pending against him and have annexed, with their reply following documents:-

- (i) Copy of communication letter dated 11.07.2013, as Annexure R-1, whereby in response to his representation dated 01.07.2013 he was informed, giving details of penalties awarded that he rightly was not given promotion and his pay was rightly re-fixed.
- (ii) Copy of communication letter dated 07.07.2012, as Annexure R-2, whereby in response to his representation dated 11.07.2012 he was informed, giving details of penalties awarded that he rightly was not given promotion.
- (iii) Copy of R.B.E. No.211/1988 dated 21.09.1988 addressed to the Zonal Managers, as Annexure R-3, on subject; procedure & guideline to be followed in cases of promotion of group 'D' & group C Railway servants who are under suspension or against whom departmental proceedings/prosecution have been initiated or proposed.
- (iv) Copy of extract of service book of the applicant as Annexure R-4, showing entries of punishment.
- (v) Statement of leave of applicant of the applicant, as Annexure R-5, showing details of his 6 years, 6 months & 29 days of period of leave without pay.

5. Applicant did file rejoinder but he did not dispute factum of awarding of penalties averted by the respondent and has pleaded that respondent implemented the penalty after long period which was not permissible.

6. Have heard the learned counsel for the parties. Learned counsel Ms. S. S. Chaturvedi, Advocate, appearing for the applicant submitted that it is undisputed that order of promotion of applicant to the post of MCF, in the pay scale of Rs. 9300-34800+4200 Grade Pay was issued, she referred promotion order dated 09.12.2009, Annex.A/2) and urged that as per promotion order applicant had to be relieved within fifteen days but he was not relieved and was wrongly denied the benefit of his promotion post of MCF. That respondents released the retiral benefits treating his last pay as Welder Grade-I and finalised the pension accordingly and said act is

illegal, that re-fixation of pay is also incorrect. She urged that penalties had to be implemented promptly and it was not permissible to implement the penalties after so much long period and thus O.A. may be allowed and respondents may be directed to extend all benefit to the applicant treating him posted on promoted post of MCF.

7. Learned counsel Ms. A. B. Makwana, Advocate, appearing for the respondents and refuting the prayer of applicant urged that O.A. deserve dismissal with exemplary costs. Ms. Makwana invited attention of ourselves to the details of penalties, which applicant was undergoing and explained that the time when applicant was promoted as MCF, two minor penalties of stoppage of increment for one year and stoppage of increment for three years were in operation and prior to completion of said penalty applicant was awarded another penalty of reduction at lowest stage at Rs. 4,500/- for two years with future effect, vide NIP dated 02.12.2007 which had been implemented from 27.12.2007 to 26.12.2009 and therefore rest penalties were implemented from 27.12.2009 to 26.05.2012 and stoppage of increment for 3 years without future effect, vide NIP dated 24.11.2004, had to be implemented from 01.07.2012 but could not be completed due to applicant's retirement on 31.05.2013. He also invited our attention to instructions issued by the Railway Board, vide Annex. R/3 dated 21.09.1988 and urged that guidelines of Railway Board has been followed and that due to multiple penalties applicant was not promoted as MCF as he never came out of shadow of penalties till his retirement hence; the promotion order issued could not be affected till date of his retirement.

8. Ms. Makwana has argued as well that applicant has not approached this forum with clean hands, he was well aware about every penalty but he deliberately did suppress the material penalty imposed. Learned counsel to fortify his submissions invited our

attention of us to Annexs. R-1, R-2 & R-4 and urged that Annexs. R-1 and R-2 are the communication sent to applicant and Annex. R-4 is the extract of his Service Book and each of these document, has details of all punishment awarded and he concluded in last submitting that applicant superannuated on 31.05.2013 whereas, the benefits which are said to be not paid consequent to his alleged promotion as MCF relates to the year 2009, therefore, the relief claimed is also barred by principles of limitation.

9. We have heard the learned counsel for the parties and have perused the record minutely. The benefits which are said to be not paid relates to the year 2009. It appears that applicant cleverly chosen not to disclose that he was undergoing punishment of withholding of increment, of reduction in same time scale or major/B&C case and it illustrates from record that applicant was well aware about these entire penalty but he has not disclosed about these penalty in his O.A. Learned counsel for applicant though has claimed that applicant was aware only about minor penalties, which he has mentioned in the O.A. but it does not appeal to mind that he did not know about three other penalties, two of whom were about stoppage of increment and one was of reduction to lower stage of scale. Details of these awarded penalties are also in Communication letter Annexs.R-1 and R-2 sent to the applicant. Communication letter dated 11.07.2013, Annex.R-1, is in response to objection submitted by applicant vide his representation dated 01.07.2013 and Communication letter dated 07.07.2012 Annex. R-2 is in response to his letter dated 11.07.2012. Through said communications, applicant was informed that because of penalty awarded he was not given promotion. Details of penalties awarded are also given in these communications. In Service Book of the applicant Annex. R-4, entries of punishment are also there. The applicant has not approached this Tribunal with clean hands.

10. When we have observed that applicant has not approached this Tribunal with clean hands, we may avoid to enter into other merits but still we did test the merit of claim of the applicant and found that otherwise also the O.A. is devoid of merits. From plain reading of promotion order, Annex. A/2 it is obvious that the promotion has not to be implemented against the person/persons promoted who are undergoing punishment and Note 2 endorsed underneath the promotion order of applicant speaks so in unambiguous terms. Note 2 reads :

“If the employee is undergoing punishment of with-holding of increment, reduction in same time scale or Major/B&C case is pending against them their promotion should not be implemented and this office should be informed by return.”

11. It is not disputed that when promotion order of applicant was issued, he was undergoing the penalty. Reply itself makes the entire story clear. When applicant was awarded penalty, vide NIP dated 02.12.2007, of reduction at lowest stage for two years with future effect, at that time already two minor penalties of stoppage of increment for one year and stoppage of increment for three years were under operation. NIP dated 02.12.2007 was implemented from 27.12.2007 to 26.12.2009 and therefore rest penalties were implemented from 27.12.2009 to 26.05.2012 and stoppage of increment for 3 years, without future effect remained to be implemented due to applicant's retirement. The Instructions issued by the Railway Board are self explanatory that promotion of an employee is always subject to that he is not undergoing any penalty.

12. In the result, the O.A. fails and is dismissed with cost. Cost imposed shall be Rs.10,000/- (Rupees Ten Thousand only).

(M.C.Verma)
Member (J)

(Mohd. Jamshed)
Member (A)

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